



Ministry
of Justice

Review of the Youth Justice System in England and Wales

By Charlie Taylor

December 2016



Review of the Youth Justice System in England and Wales

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by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

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Chapter 1 – Introduction

Context

1. In 2007, 225,000 children in England and Wales received a caution or conviction for a notifiable offence¹. Of these children, 106,000 were first-time entrants to the system having never before received a caution or conviction. 126,000 were prosecuted at court, and 5,800 were sentenced to custody. The average monthly under-18 custodial population for 2007 was 2,909².
2. Since that high watermark the number of children dealt with by the youth justice system has reduced spectacularly, with consistent year-on-year falls. The number of children cautioned or convicted in 2015 was 47,000 – down 79% since 2007. Over the same period the number of children entering the youth justice system for the first time has fallen by 82%, the number prosecuted at court has reduced by 69%, and there are now around only 900 under-18s in custody².
3. In the last decade the demand for youth justice services has changed. The police and youth offending services have, rightly, increasingly sought to deal informally with minor offending by children. The diversion from the youth justice system of children who were never likely to continue offending has meant that those who remain are the most difficult to rehabilitate.
4. Among the children now in the youth justice system are high numbers of black, Muslim and white working class boys; many are in care, and mental and other health problems, and learning difficulties, are common. These groups are particularly over-represented in custody, where over 40% are from black, Asian and minority ethnic (BAME) backgrounds², a large proportion have previously been in care (38% in Young Offender Institutions, 52% in Secure Training Centres)³, and more than a third have a diagnosed mental health disorder⁴. Many of the children in the system come from some of the most dysfunctional and chaotic families where drug and alcohol misuse, physical and emotional abuse and offending is common. Often they are victims of crimes themselves. Though children's backgrounds should not be used as an excuse for their behaviour, it is clear that the failure of education, health, social care and other agencies to tackle these problems have contributed to their presence in the youth justice system.

¹ Ministry of Justice (2016) Criminal justice system statistics quarterly: December 2015.
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

² Ministry of Justice and Youth Justice Board (2016) Youth custody report: September 2016.
<https://www.gov.uk/government/statistics/youth-custody-data>

³ HM Inspectorate of Prisons (2015) Children in Custody 2014-2015: Appendices.
<https://www.justiceinspectorates.gov.uk/hmiprison/inspections/children-in-custody-2014-15/>

⁴ Harrington, R., Bailey, S., Chitsabesan, P., Kroll, L., Macdonald, W., Sneider, S., & Barrett, B. (2005). Mental health needs and effectiveness of provision for young offenders in custody and in the community. Youth Justice Board for England and Wales.

5. Yet these are children for whom a traditional criminal justice response has been shown to be, on its own, inadequate. Sixty-four per cent of children given a Youth Rehabilitation Order by the court, and 69% of those sentenced to custody, go on to reoffend within a year⁵. If the youth justice system is truly to protect the public, it must succeed in changing the lives of these most troubled children. To do this, a system set up almost two decades ago to tackle a different problem must evolve to respond imaginatively and proportionately to the challenges of today.

Principles and aims for the review

6. It is right that children who break the law are dealt with differently to adults. Children act impulsively and often do not appreciate the consequences of their actions; they are not emotionally developed and may struggle to communicate effectively. This is particularly true of so many of the children who offend, who often have learning or speech and communication problems. But children also have great strengths on which to build and are capable of rapid and extraordinary change. There needs to be a shift in the way society, including central and local government, thinks about youth justice so that we see the child first and the offender second. Offending should not mean forfeiting the right to childhood. If children who offend are to become successful and law-abiding adults, the focus must be on improving their welfare, health and education – their life prospects – rather than simply imposing punishment.
7. Almost all of the causes of childhood offending lie beyond the reach of the youth justice system. It is vital that health, education, social care and other services form part of an integrated, multi-agency response to a child's offending, but it is more desirable that these same services intervene with at-risk children and families before their problems manifest themselves in offending. I believe this is best achieved by devolving greater freedoms and responsibility for the youth justice system to local authorities who otherwise hold the statutory accountability for educating and protecting children. By aligning these responsibilities stronger incentives can be created for a child's offending and related difficulties to be tackled promptly, proportionately and with the least cost to the taxpayer. To help professionals to exercise these functions effectively, I propose stripping back the prescription and bureaucracy associated with a centrally controlled system and creating a clearer inspection and accountability framework, so that practitioners are judged on the outcomes that they achieve rather than the processes they follow.
8. It is my view that education needs to be central to our response to youth offending. All children in England are required to be in education or training until their 18th birthday, but too often children in the youth justice system have been out of school for long periods of time through truancy or following exclusion. As a result, half of 15-17 year olds in YOIs have the literacy or numeracy levels expected of a 7-11 year old⁶. Schools and colleges are crucial in preventing offending. If children are busy during the day, undertaking activity that is meaningful and that will help them to succeed in life, whether it be studying for exams, learning a trade or playing sport or

⁵ Ministry of Justice (2016) Proven reoffending statistics quarterly: July 2013 to June 2014, Table C1b. <https://www.gov.uk/government/statistics/proven-reoffending-statistics-quarterly-january-to-december-2014>

⁶ Ministry of Justice (2013) Analysis of Education Funding Agency administrative data, published in Transforming Youth Custody. <https://www.gov.uk/government/consultations/transforming-youth-custody-putting-education-at-the-heart-of-detention>

music, they are much less likely to offend. Education and training are also the building blocks on which a life free from crime can be constructed. By forging closer links between schools, colleges and youth offending services, and by transforming youth custody into Secure Schools, drawing in expertise from the best alternative provision schools, children can be equipped with the skills, qualifications and confidence to move beyond offending and fulfil their potential. The government's new ambition to make schools in England responsible for the educational provision of pupils that are excluded is particularly welcome as it will maintain the connection with mainstream education for some of the most troubled children.

9. In reforming the youth justice system it must be recognised that, for the vast majority of children, offending is a short-lived phase. The most recent data suggest that 62% of children who receive a caution or conviction do not go on to reoffend within 12 months⁷. Growing up involves making and learning from mistakes. It is right that the youth justice system should tackle serious and persistent offending, but it should not be the mechanism by which all childhood mistakes are redressed. The right response to childhood offending should always be to address the causes of the offending behaviour and to repair harm to victims. This does not always require a criminal justice intervention. Evidence shows that contact with the criminal justice system can have a tainting effect on some children and can increase the likelihood of reoffending⁸. Wherever possible minor crimes should be dealt with outside the formal youth justice system, and when a criminal justice response is required children should be dealt with at the lowest possible tier. The long-term implications of formal contact with the system must also be reduced so that these do not act as barriers to rehabilitation.
10. It was concerning to see versions of the "Scared Straight" programme operating in England, in which either prison officers or prisoners themselves attempt to deter children from criminality by showing or explaining the realities of life in prison. This is despite international evidence that such interventions can increase the likelihood of offending among children and young people⁹. In general, there is surprisingly little robust evidence from the UK about which interventions are the most effective, but what is undoubtedly important is the quality of the worker who is involved with the child, and the relationship that they strike up⁹. The evidence suggests that having one person directly involved, holding the child in mind, keeping going when things go wrong and caring about what happens to him or her, is vital in helping a child to change¹⁰.
11. A more proportionate response to offending must also mean that the government and local services are prepared to invest intensive effort in turning around the lives

⁷ Ministry of Justice (2016) Proven reoffending statistics quarterly: July 2013 to June 2014, Table A1. <https://www.gov.uk/government/statistics/proven-reoffending-statistics-quarterly-july-2013-to-june-2014>

⁸ See for example: McAra, L., & McVie, S. (2007). Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending. *European Journal of Criminology*, 4(3), 315-34. Petrosino, A., Turpin-Petrosino, C., & Guckenburg, S. (2010). Formal system processing of juveniles: Effects on delinquency. *Campbell Systematic Reviews*, 1, 3-80. doi:10.4073/csr.2010.1

⁹ Adler, J. R., Edwards, S., Scally, M., Gill, D., Puniskis, M. J., Gekoski, A., & Horvath, M. A. (2016). What works in managing young people who offend? A summary of the international evidence. Ministry of Justice. <http://eprints.mdx.ac.uk/18848/1/youth-justice-review.pdf>

¹⁰ See for example: HM Inspectorate of Probation (2016) Desistance and Young People. <http://www.justiceinspectorates.gov.uk/hmiprobation/inspections/desistance-and-young-people/>

of the most profoundly troubled children. Some children who commit persistent or serious offences have a range of problems that means criminal justice processes need to be able to adapt to individual circumstances. Professionals must have the freedom and the flexibility to make decisions about a child's rehabilitation, and to adjust these plans to recognise progress or respond to setbacks. I believe the role of the court should be enhanced so that youth magistrates can play a much more active role in designing tailored plans for children, co-ordinating the contributions of partner agencies and holding the child, their parents and these agencies to account. Similarly, for those children remanded or sentenced to custody, the head teacher of a Secure School must have the freedom to hire the right staff, commission the required services and establish a programme of activity that will engage, motivate and rehabilitate the children in his or her care. To achieve this, custody must truly be the option of last resort, and those who go there must stay for a meaningful period of time. Professionals must be equipped with sufficient powers, and then trusted to take the right decisions with the most challenging children, if they are to reduce reoffending and thereby create fewer victims.

Chapter 2 – A more devolved youth justice system

The creation of Youth Offending Teams

12. The establishment of the youth justice system in 1998 was a response to a growing sense that youth offending was not being dealt with in a systematic way, and that locally no one was taking responsibility for children who were involved in crime. There was particular concern with unchecked, low-level anti-social behaviour and the perception that in some places groups of delinquent children were causing widespread problems in their communities. The government aimed to create a system that would “nip in the bud” youth offending by reacting swiftly and firmly to early signs of criminal behaviour.
13. The Crime and Disorder Act 1998 introduced a requirement that all local authorities must establish a Youth Offending Team (YOT) comprising members from the police, social services, probation, health and education. The legislation specifies that YOTs must:
 - assist police with out-of-court disposals and arrange for appropriate adults to be present during police questioning;
 - provide reports and information required by the courts in criminal proceedings against children and young people;
 - supervise children and young people serving a community sentence; and
 - supervise children and young people released from custody.
14. The YOT model was designed to achieve a more consistent approach to tackling youth offending, and to embed partnership working by bringing together the agencies that were seen as essential contributors to preventing youth crime. The multi-agency foundations of YOTs were consolidated by the requirement for management boards to oversee the performance and operation of the YOT, and whose membership included senior leaders of the partner services.
15. Much progress has been made as a result of these reforms, and services work better together now than ever before. Before the 1998 Act the police and local authorities would sometimes see themselves as being on different sides when it came to youth crime, and at times there was antagonism and suspicion. Now it is not unusual to see police officers and social workers sharing a desk. YOTs have developed considerable expertise over the years and, most importantly, a workforce who are prepared to work with, engage and support some of the most challenging and damaged children in their communities. I have been impressed, time and again, by the energy and determination of those who perform this role with children that the rest of society has, sadly, often given up on.

Evolution of youth offending services in the community

16. In recent years the YOT model has evolved in many parts of England and Wales. Perhaps the two most significant causes of this development have been dramatic reductions in the number of children in the system (a 74% reduction in the statutory caseload since 2006/07)¹¹ and continued reductions in the funding for YOTs from local authorities and from central government. As a result local authorities have been forced to think about whether their delivery models meet the needs of a smaller, more challenging cohort of children who offend, and how these services can be provided more efficiently.
17. The children with whom YOTs now work are, in general, those whose offending is a manifestation of a number of things that are going wrong in their lives. These children are often victims of crime as well as perpetrators, and many are in care or known to social services. Many have poor records of school attendance and educational achievement; learning and communication difficulties are common; and many have poor mental and physical health or are on the autistic spectrum. These children require a carefully considered and coordinated response from a number of partners, making the link between YOTs, children's, health and education services all the more critical if the root causes of offending are to be addressed.
18. There is no doubt that a key strength of the youth justice system has been the delivery through YOTs of locally based, multi-disciplinary services for children who offend. Nevertheless, an unintended consequence of this has been the stepping back, on occasion, by other services from working with children who are engaged with YOTs. I have been concerned to hear from a number of workers, that other agencies who had been working with a child, will withdraw their support at the moment the child offends and the YOT becomes involved. Equally, while the creation of YOTs provided status to a previously neglected area of the criminal justice system and gave those working with children who offend a clear professional identity, it has often resulted in some YOTs being alienated from other local authority services and operating within a silo. This has left some YOTs unable to secure the essential contributions of other services that their multi-agency make-up was intended to guarantee. Too often the shutters come down when YOTs try to get support from social care, education, housing or health for a child who needs a coordinated response if their offending is to desist. With the needs of the children now left in the system, this response is unacceptable, and it must change if the stubbornly high reoffending rates are to be reduced.
19. I have been encouraged to find a number of innovative models for delivering youth offending services which seek to strengthen these links. In Surrey, for example, the YOT has been successfully integrated into the local authority's wider youth services. This means that a child in the youth justice system can access the same broad spectrum of provision as a child who is homeless, not in education, employment or training (NEET), or has other welfare needs. This provides a more comprehensive response to children who offend and increases the opportunity to divert them from the youth justice system and into other suitable services, while allowing greater flexibility in the length and intensity of support provided. Similar approaches are evident in Oldham, Gloucestershire, Pembrokeshire, and Kingston and Richmond,

¹¹ Ministry of Justice and Youth Justice Board (2016) Youth justice statistics: 2014 to 2015, Supplementary tables, Table 3.7. <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2014-to-2015>

though in each of these areas the youth offending and support services have been outsourced to community interest companies or other groups.

20. In Leeds, which has the ambition to be a Child Friendly City, the local authority has worked hard to bear down on the number of children in the care system. The focus is, wherever possible, on keeping children at home and giving families the support they need to change. Where children do go into care, work is done with the family in order to give them the support to look after the child safely if he or she is able to return. The youth offending service staff from Adel Beck secure children's home and wider partners have worked together successfully with families, carers and care homes within and without Leeds. That work has improved their ability to manage the behaviour of teenagers and make sure that provision is safe. This relentless and seamless multi-agency support is at the core of the local authority's success in supporting its most vulnerable children, whether or not they are offending.
21. Some local authorities in England have used the government's Troubled Families programme as an opportunity to bring services together. This initiative has sought to change the experience of many families who have been subject to an invasion of professionals from a range of agencies, asking similar questions and providing well-meaning but uncoordinated help. Emerging criminality and attendance at school are two of the triggers for support from the programme, and many YOTs are heavily involved with this work, even leading it in some areas. The overlapping criteria for support through the Troubled Families programme and the YOT mean that a joint response is essential.
22. None of this is to say that the YOT model cannot be adapted locally to overcome these challenges. Some local authorities such as County Durham and Cornwall have retained a YOT model closer to its original form but co-located it with their children's services to achieve a more integrated response to vulnerable and offending children. In Stockport the YOT is spread out within the local authority's children services hubs, retaining some central specialised workers for the most challenging cases such as sex offences. In other parts of England and Wales local authorities have merged their YOTs in response to the falling numbers of children who offend, and in order to achieve greater reach with their services and realise efficiencies. In Newcastle, the YOT has established the Skill Mill – a work programme developed with local businesses and services that gets children who have offended into habits of work and then supports them in gaining employment. The Skill Mill is now setting up programmes in other parts of the country.

Enhancing the multi-agency approach

23. For the smaller number of children left in the youth justice system, I am clear that a narrow criminal justice response will not on its own be enough to stop their offending. Coordinated action from a range of services will be crucial not just to rehabilitate these children, but to repair and enhance their life prospects. In my view it is often health and education services that can have the greatest impact, and where I believe the greatest improvements can be made.

Health

24. Health services play a vital role in preventing youth offending. Many children who offend have mental health, behavioural or learning difficulties¹², and often these conditions have gone undiagnosed. These problems can be at the root of a child's offending, and frequently are a barrier to engagement or progress in education. Tackling these problems as quickly as possible is therefore essential.
25. It is a considerable disappointment that time and again during the review the provision of mental health services for children has been criticised by YOTs and by schools. They consistently report difficulties in getting support to those children and families who need it most. The thresholds for involvement from Child and Adolescent Mental Health Services (CAMHS) appear to be impossibly high in some areas, and children who are showing signs of palpable distress, both in their presentation and their behaviour, are not meeting the criteria for specialist mental health support. As one YOT worker put it, "The message seems to be: 'You aren't sick enough yet – come back when you are really ill and then we will treat you'". A rigid model of treatment on diagnosis results in many children not getting the help they need, early enough. In the meantime, of course, the child becomes more distressed and further drawn into the cycle of offending, creating further victims of crime and triggering a justice response rather than the mental health treatment that he or she needs.
26. The children who do reach the threshold for support are often then unable to access it. They are given appointments to attend a clinic (which may be a long way from home), but frequently come from chaotic families unable to help them to attend at the right time. Children who miss three appointments are then often struck off and will need to go through the referral and assessment process again to get help in the future. This means that many children with acute difficulties, and who present a risk to themselves and their community, do not get help. The clinic-based model of mental health support simply does not work for many children who need the service the most. Lessons should be learned from successful outreach projects such as those delivered by MAC-UK, a charity based in London to help children with mental health difficulties who have not been successfully supported by CAMHS. Rather than being based in a clinic, workers go out to where the children are – on estates, in parks, at home – to give them support. It is this sort of innovation and determination with the most troubled children that mental health services need to display.
27. In 2015 the UK government announced a £1.4bn investment in improving mental health treatment for children in England. In Wales, the Welsh government has made a similar investment, with a proportion of the funding dedicated to improving better co-ordination between youth justice and children's mental health services. This is extremely welcome, and in England, Clinical Commissioning Groups have developed transformation plans setting out how the money will be used to support a new approach, rather than increasing investment in services as they are currently

¹² See for example: Chitsabesan, P., Kroll L., Bailey S., Kenning C., MacDonald W. & Theodosiou L. (2006). Mental health needs of young offenders in custody and in the community. *British Journal of Psychiatry*, 188, 534-540. Ministry of Justice and Youth Justice Board (2012) Youth justice annual statistics: 2010 to 2011, see chapter 12: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279892/yjb-statistics-10-11.pdf

constituted. It is essential that commissioners and health providers in England and Wales seize these opportunities to rethink the way that mental health support is provided for children who are at risk and who currently do not get the access they need or deserve. Mental health workers must be prepared to come out of their clinics and work with children in the community, whether that is in schools or in the child's home. This will require a big cultural shift and strong leadership. One YOT worker described how, when CAMHS staff could be persuaded to do home visits, they insisted on being accompanied by another member of staff – a far cry from social workers who will visit all but the most high-risk families on their own. Children and young people's mental health services must also be fully integrated into the work of local authorities with their most troubled families and children, and must make sure that when children leave custody there is real continuity of support at a time when they are particularly vulnerable.

28. Many YOTs, such as in Hackney and Blaenau Gwent and Caerphilly, have benefitted from having mental health workers embedded in the team who are able to assess and treat children, train staff to understand and look out for mental health difficulties, and make referrals for specialist treatment where necessary. Equally, YOTs have talked positively about the contribution speech and language therapists have made to their services given the prevalence of communication difficulties among children in the youth justice system. Sadly, though, many YOTs struggle to secure the health support they require, and invariably it is health services that practitioners identify as the most reluctant partner in a YOT. Given the importance of health in tackling offending, this is not acceptable. Health providers must work more collaboratively with local authorities to assess the level of need and make sure that they provide sufficient qualified and experienced staff to improve the health of children who are offending.

Education

29. Many of the children in the youth justice system have had little or no engagement in education¹³. It is common for children in trouble with the law to have had poor school attendance from an early age, and to have begun to play truant as they got older. Many have learning difficulties and lack the basic skills in literacy and numeracy to succeed at school, while many have been permanently or temporarily excluded. I have often heard about children who are sent to low-quality alternative provision or are placed (illegally) on a reduced timetable for extended periods of time. There are also a number of children whose parents have been persuaded to take their child off the school roll and, nominally, to educate them at home.
30. The links between low educational engagement and attainment and the risk of childhood offending are well established¹⁴. Primary and nursery schools have a critical role in making sure that families get in to good habits of school attendance and that any patterns of absence are quickly and robustly followed up, through direct work with the family or a referral to education welfare services or to social care. The gap between the attendance of the poorest children and their better off peers is still

¹³ See for example, Youth Justice Board (2006) Barriers to engagement in education, training and employment. HM Inspectorate of Prisons (2015) Children in Custody 2014-2015. <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/children-in-custody-2014-15/>

¹⁴ See for example, Youth Justice Board (2005) Risk and protective factors. Farrington, D. P. (2007) Saving Children from a Life of Crime. Early risk factors and Effective Interventions. Oxford University Press.

too large, and inspectorates should continue to make attendance in the early years and key stage one a priority.

31. It is also essential that children at risk of or involved in offending must be involved in education, training or work. In some YOTs, such as Gateshead and Cheshire West, Halton and Warrington, this has been a particular focus, and workers have been employed with the specific task of liaising with education providers to make sure that a placement is found for each of their children. This dedicated focus enables these YOTs to challenge school and college leaders where this is not happening. In other areas, however, work with education services features much less prominently and there has not been a sufficient effort to engage with schools, colleges and training providers. In many community sentences education does not feature as a requirement of the order, and there is sometimes a lack of confidence among YOT staff in working with providers. Too often there is an assumption made that children who offend are not capable of succeeding in education, even where there is real enthusiasm from the child.
32. This is a culture that must change. Education services are a statutory member of YOTs, but often they seem to play a peripheral role in efforts to rehabilitate children. Effective youth offending services must have strong links with a wide range of schools, colleges, and employers in the community, and securing access to and continued engagement in education, training or work must be seen as a vital part of the response to children who offend. It is not difficult to understand why children who are not doing anything enjoyable, motivating, productive or tiring during the day, are more likely to become involved in crime as a result of boredom, low self-esteem and peer pressure. As well as local authority youth offending services doing more to embed education and training as part of their routine offer to children, schools and colleges must show greater leadership and responsibility in offering places to children who have offended.
33. In the Department for Education's recent white paper *Educational Excellence Everywhere* it was announced that schools in England will be responsible for commissioning the education of children whom they have permanently excluded, and that they will also be accountable for their results. This will replace the current system in which the local authority commissions places for these children and they do not appear in the excluding school's performance tables, creating a potential incentive for schools to get rid of their most troublesome pupils. As a result of this change, I would expect the education of the most challenging children to become a greater priority for head teachers and more groups of schools will come together to create high-quality alternative provision for children who are not currently able to be in mainstream education. I would urge the Welsh government to consider a similar approach to funding following the child and schools remaining accountable for excluded children. There have already been some examples of this happening such as the East Birmingham Network Alternative Provision Free School set up by a group of head teachers who wanted to provide effective education for their most challenging children. I have also been very pleased to hear that Ofsted, as part of its school inspections, now often visits children who have been placed in alternative provision to make sure that their needs are addressed and that the quality of education is good.

34. The changes in England to the arrangements for children who have been excluded from school should provide the opportunity for a new dialogue between youth justice workers and schools to make sure that the right high-quality, bespoke and, where necessary, therapeutic education is provided for children at risk of offending.

Greater flexibility in the delivery of youth offending services

35. Throughout this review, I have described the way in which a criminal justice response alone is not sufficient to deal with children who offend. Those who remain in the system have a wide range of needs that must be addressed if their behaviour is to change and they are to go on to be successful adults. In order that youth offending and other services can provide a more coordinated and tailored response to this smaller but high-need group of children, and to do so in a time of severe financial challenges, I believe that local authorities must be given greater freedom to innovate and develop their models of delivery. As one Assistant Director of Children's Services put it to me: "You (the government) have been 'creative' with our money; you must now allow us to be creative in how we spend it." This is particularly important when an increasing proportion of children in the youth justice system are looked after by the state and are otherwise interacting with many local authority services.
36. Although some local authority officers have stressed the importance of the 1998 Act in requiring partners to come together in multi-agency teams, there is enthusiasm for reform of the current arrangements from many local authorities that feel constrained from acting creatively and ambitiously with their most challenging children and families by the existing statutory requirement to have a YOT. I have spoken to many local authority leaders who want the freedom to integrate their youth offending services with their children, family, youth and mental health provision, and to work differently with education, health, social care and housing services. Where local authorities are setting up trusts to run children's services, in some cases these have expanded to work with neighbouring authorities and have also taken over the running of underperforming services. These have led to more flexible and creative ways of delivering support to the most vulnerable families and children. When local authorities are considering creating trusts, they should certainly include youth offending in these arrangements.
37. I believe the government should be clear about *what* it wants local authorities to achieve, but not *how* they are to achieve it. I propose, therefore, that the government should legislate to remove the requirement for local authorities to establish a YOT, and the statutory duties which apply to YOTs should be transferred to local authorities, where appropriate. Crucially, and in order that a multi-agency approach is maintained, duties must remain for the police, probation, health and education services to cooperate with local authorities to develop, deliver and oversee integrated services for children who offend. Some areas may choose to keep elements of their current model, but I do not want the laudable intentions of the 1998 Act – a partnership response to youth offending, and clearly defined responsibilities – to become a barrier to innovation and the development of more effective ways of operating where this is the ambition of local partners. The government should monitor the continued commitment of services to youth offending and, if necessary, should consider strengthening the requirements.

38. In keeping with this relaxation of central prescription, I also believe that local authorities must have greater clarity of their funding arrangements and increased freedom in how this money is used. Of the overall funding provided to YOTs across England and Wales, at present approximately 70% of this comes from local authorities and statutory partners, while around 30% comes from the Ministry of Justice via a grant made by the Youth Justice Board for England and Wales (YJB)¹⁵. The effect of this split is that local authorities and the Ministry of Justice decide their contributions in isolation, and YOTs are unable to make long-term plans with any certainty about future funding. It also means that YOTs have two systems of accountability for financial management.
39. In addition, the grant made to YOTs by the YJB is ring-fenced and can be spent only on 'the delivery of youth justice services'. This does not fit well with a reformed youth justice system which provides greater freedom to local authorities to adopt more flexible and integrated ways of working. I recommend that this money is rolled into the English local government finance system as it undergoes reform, and into the funding that local authorities in Wales receive from the Welsh government, and that the ring-fence requiring that it is spent narrowly on youth justice services is removed.
40. Similar changes were made in Scotland in 2008, and at the time there were concerns that the expertise of youth offending teams would be lost or diluted. This has, however, not been the case. In some parts of the country where offending rates were very low, such as Orkney and Shetland, the local authority stopped running a discrete youth offending team. In Edinburgh, the youth offending team was merged with a wider young people's service, and in addition to fulfilling its statutory functions in relation to the courts and children's panels it has a broader remit to work with children and families that are in need of help. Crucially, interventions are not aimed simply at the child, but address the needs of the family too, and can continue beyond the conclusion of a court order. Instead of losing the expertise of YOT workers, Edinburgh has built on their strengths and experience to create a joined up service more aligned with the Troubled Families approach in England than it is with a traditional YOT.
41. The removal of both the requirement to have a YOT and the ring-fence for the funding creates opportunities for local authorities to think creatively about how they fulfil their statutory functions to deliver youth justice services and to prevent offending. Some in England are already beginning to think about incorporating these changes through new combined authority models of governance (sometimes with mayors) which are being established, often with associated devolution deals. Combined authorities provide local authorities with a vehicle through which they can pool their resources and think more imaginatively about how they help children and families at risk – for example, through a shared approach to delivering children's services through a trust. Greater Manchester is in the process of designing ambitious new ways of cooperating between the 10 metropolitan boroughs through the office of the mayor.

¹⁵ Ministry of Justice and Youth Justice Board (2016) Youth justice annual statistics: 2014 to 2015, Annex B.2. <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2014-to-2015>

42. Police and Crime Commissioners (PCCs) also play an important role in the delivery of youth justice services, and many of them fund YOTs to undertake preventative work. This gives them a crucial lever in driving improvement and holding local authorities to account. I believe PCCs should be proactive in using their influence to bring together the police and local authorities to make sure that priorities are agreed and there are clear, accountable protocols for collaborative working between services, particularly in relation to diversion schemes, information sharing and staff training. In Wales, the Welsh government provides additional funding to YOTs and, as responsibility for education, health and wider services for children are devolved, can play a significant role in promoting enhanced partnership working between these different agencies.

Accountability in a more devolved system

43. YOTs are accountable both to local authorities and to the YJB for the way they spend their money. As the biggest investor in YOTs, it is to local authorities that YOTs feel principally accountable, but it is the YJB which prescribes the national standards which YOTs must meet, requires them to submit an annual plan and monitors their performance. Inevitably there is some duplication in the oversight of YOTs between local authorities and the YJB. This level of central prescription and control was right when YOTs were originally established, but I do not believe that it is necessary any longer, and I am concerned that it risks constraining innovation. I propose to halt the centre's role in routine performance management of youth offending services, including removing the requirement for local authorities to produce an annual plan, while establishing a clearer role for the government in promoting a culture of peer improvement and intervention in failing services (see Chapter 6 below).
44. Children in the youth justice system will often have been assessed by a range of other services. My ambition is to simplify these processes for children and practitioners, and to reduce the incidence of parallel systems which contain the same information and do not interact with each other. The Ministry of Justice should give further consideration to whether local authorities should be able to use their own assessment systems, rather than use systems prescribed by the centre, while making sure that central government continues to have access to the data it needs. This would allow a single local form of assessment for any vulnerable child, whether the child is an offender or not. Parallel assessments and plans from different agencies applying to the same child gives rise to the risk of miscommunication, duplication and the development of silos for the very children and families who need a seamless, joined up response. Ultimately, local authorities should aim to create a one-child, one-plan system owned and contributed to by all relevant partners.
45. Local accountability of youth offending and related services will be sharpened by my proposals for Children's Panels which will develop Plans for convicted children and challenge agencies to meet their commitments in supporting the child's rehabilitation. This form of direct, local accountability will have the potential to effect real change in a manner that oversight by the centre could never achieve.
46. The inspection arrangements for YOTs and local authority services for children are also split. Ofsted inspects education and children's services in England, and in Wales education is inspected by Estyn and children's services by the Care and Social Services Inspectorate Wales (CSSIW), but it is Her Majesty's Inspectorate of Probation (HMI Probation) which is required to inspect YOTs across England and

Wales. Given the high numbers of looked after children in the youth justice system, and that many more will be engaging with other local authority services, this means that the same child's case file will often be looked at by two different inspectorates with different expectations and priorities. This is not helpful for youth offending services, nor efficient for the inspectorates. I propose that local authority youth offending services in England should be inspected by Ofsted as part of the inspection of children's services, while youth offending services in Wales should be held to account by Estyn and CSSIW. These inspections should involve support from HMI Probation to examine the management of children who are at risk of committing serious offences, and to assess how well cases are transferred to adult probation services. These bodies should work with health inspectorates – the Care Quality Commission in England and the Healthcare Inspectorate Wales – to consider how the interaction between health and local authority services for children can best be examined and promoted through the work of the inspectorates. As I describe below (see Chapter 5), Ofsted should lead the inspection of Secure Schools in England in order that greater scrutiny can be achieved of the links between community and custodial provision for children, and the effectiveness of work to resettle children after release. In Wales this role should be performed by Estyn with support from the CSSIW.

47. Local authorities should be judged on the number of children entering the youth justice system, the number in custody and the reoffending rates of their children. To make sure that the integrated inspection of local authorities' children and youth offending services drives the right focus, there should also be a distinct focus within the framework on:
 - the number of looked after children in the youth justice system, the quality of the services provided to this group and the outcomes they achieve;
 - the number of children who offend in need of and accessing health treatment, and the quality, timeliness and outcomes of this treatment;
 - the number of black and minority ethnic children in the youth justice system relative to the local population and crime trends; and
 - the number of children who offend who are not in education, employment or training (NEET), and the steps being taken to reduce this.
48. Where inspectorates have identified particular failures with the delivery of youth justice services, the Ministry of Justice and the Department for Education should explore options for addressing concerns in line with existing powers to tackle under-performance in children's services departments by facilitating access to support from high-performing peers or requiring the local authority to pass responsibility on to a trust.

Devolution of the budget and commissioning responsibility for youth custody

49. Many of the problems of the current system are, in my view, symptomatic of an uneasy division between central and local responsibilities. The most striking example of this is that the cost of keeping children in custody is borne by the centre, meaning that local authorities actually save money when one of their children is incarcerated, particularly when they would have been funding an expensive care placement. This creates a moral hazard where local authorities have no incentive to

keep children out of custody, or indeed to resettle them effectively. It also means that local authorities have little say over what happens to their children when they are in custody, and no way of influencing the quality of the provision.

50. In 2013 the responsibility for funding custody places for children on secure remand was passed to local authorities. The intention was to provide a stronger incentive for local authorities to reduce the use of secure remand and to find suitable alternative accommodation for children, where appropriate. Since 2013 the use of secure remand has reduced by 34%¹⁶, but local authorities have complained that they have no power to commission remand places for their children and are obliged to pay no matter where the child is held. As a result some local authorities have been left with a hefty bill, particularly where a child has been held in an expensive secure children's home over a considerable period of time.
51. I believe that devolving the budget and commissioning responsibility for youth custody, whether for remanded or sentenced children, provides the greatest opportunity to tailor these services to the particular demands and challenges in an area, and to achieve seamless integration with schools and other services in the community, as well as with families. A custodial sentence is a single sentence, but its two parts (detention and community supervision) are currently delivered by different providers with very different objectives and professional backgrounds, and for the child there is no continuity of relationships or provision of services. Indeed it is this very disjuncture between custody and community services which makes effective resettlement so rare, and reoffending often inevitable. Devolving the responsibility for youth custody has the potential to transform the resettlement of children released from custody and improve reoffending outcomes. In time, it could also enable local authorities and health commissioners to take a more imaginative approach to the services that are available for a broader cohort of vulnerable children – for example, those who offend, those who are in care and those who require mental health provision.
52. The Ministry of Justice should work with the Department for Education and the Welsh government to create Secure Schools, a new form of custodial establishment for children (see Chapter 5 below). In the future, when local partners have developed the required capability, the Ministry of Justice should devolve the money it currently spends on custodial places to local areas, regions or the Welsh government in order that they can assume responsibility for commissioning places in Secure Schools. Given the small number of children in custody, I would envisage consortia of local authorities in England coming together, such as through combined authorities, in order to achieve economies of scale. In Wales, this would most likely be best achieved by the Welsh government assuming these responsibilities. Areas will need strong partnership arrangements to take on this role. I propose that as the Ministry of Justice works with the Department for Education and the Welsh government to develop plans for establishing Secure Schools, consideration is given to the process by which the capability of partners to assume responsibility for commissioning places in Secure Schools can be assessed.

¹⁶ Ministry of Justice (2016) Criminal justice system statistics quarterly: December 2015.
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

Chapter 3 – Coming into contact with the youth justice system

Trends in first-time entrants to the youth justice system

53. The creation of YOTs coincided with a target-driven approach to policing, including a government aim to increase the number of offences brought to justice. The combination of this target and increased confidence in the ability of the youth justice system to take effective action with children who offend, led to the number of children being cautioned or convicted rising by 25% between 2000/01 and 2006/07¹⁷.
54. Where in the past police officers might have dealt with minor incidents on the street, or by taking children home to be told off in front of their parents, these targets encouraged them to deal formally with youth crime. One former police officer described how he had once been called to a school where a boy had duped over a hundred pupils and staff to sponsor him to take part in a non-existent charity event. Each incident of deception was then counted as a solved crime and registered more than a hundred offences brought to justice against police targets.
55. Children seem to have been disproportionately affected by these targets as their offending is often easy to detect – much of it is unsophisticated and takes place in public. The effects of children having increased contact with the youth justice system were compounded by a three-strikes policy which required that a third offence, no matter how trivial, would result in a child being prosecuted at court. By 2008 the number of children in youth custody stood at around 3,000¹⁸.
56. In 2008 the government removed police targets for bringing minor offences to justice and established a new target to reduce first-time entrants to the youth justice system by 20% by 2020. This target was met within one year. The ease with which a trend established over many years was suddenly reversed demonstrates how powerful the pursuit of targets can be in driving behaviour, which can easily lose sight of the public interest in individual cases. The substantial and continuing reductions in first-time entrants to the youth justice system since then also highlight just how many children were unnecessarily dragged into the system during this period.

More effective use of diversion

57. Evidence suggests that contact with the justice system can have a tainting effect on children – i.e. it makes them more, rather than less, likely to reoffend¹⁹. This means that rather than a criminal justice response nipping their behaviour in the bud, children who are formally dealt with seem to get pulled further into the system.

¹⁷ Ministry of Justice and Youth Justice Board (2012) Youth justice annual statistics: 2010 to 2011, Table 2.1. <https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2010-2011>

¹⁸ Ministry of Justice and Youth Justice Board (2016) Youth custody report: April 2016. <https://www.gov.uk/government/statistics/youth-custody-data>

¹⁹ See for example: McAra, L., & McVie, S. (2007). Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending. *European Journal of Criminology*, 4(3), 315-34. Petrosino, A., Turpin-Petrosino, C., & Guckenburg, S. (2010). Formal system processing of juveniles: Effects on delinquency. *Campbell Systematic Reviews*, 1, 3-80. doi:10.4073/csr.2010.1

There are likely to be many reasons for this: children can become labelled or begin to self-identify as offenders; contact with the system may demystify it for children and reduce the deterrent effect; and some will breach the conditions placed on them and receive further, more significant punishment.

58. Diversion schemes set up around the country between the police and YOTs have sought, where possible, to deal with children outside of the criminal justice system. This is undoubtedly the right approach and one which I am keen to see used more consistently and effectively. In Wales, every area operates a scheme such as the Youth Bureau, first developed in Swansea, to divert low-level offending away from the formal system as quickly as possible. Close cooperation between the police and youth offending services means that a joint decision can be made as to which offenders can be dealt with informally and which will need to go to court. Similarly, in Cardiff a triage system operates where workers from the Media Academy Cardiff (MAC), a local charity funded by the YOT, are present in the police station. When a child admits a low-level offence the supervising officer will decide whether to make a referral to the MAC worker who will then complete a simple assessment. In most cases the child will then be offered the chance to avoid formal proceedings and become involved in one of MAC's programmes. At the heart of all the interventions offered is consideration of the needs of the victim and the opportunity for the child to make some form of reparation, often through a restorative justice process. Very few children fail to take up this informal support, and those discovered by the assessment process to have additional concerns can be referred to other agencies such as mental health or social care.
59. Most areas already operate diversion schemes for children who offend, but there is a wide range of differing practice across England. All local authorities, police forces and health services should jointly operate diversion schemes which adopt the following principles:
- **Proportionality** – intervention with the child will not always be necessary, but where it is it should represent the minimum appropriate criminal justice response and the activity must be meaningful, productive and relevant to the child's needs. Interventions must not simply be punitive if they are to have any real effect. Diversion schemes should provide for on-street decisions for minor routine offences through to multi-agency decision making in complex cases;
 - **Sensitive to victims** – the needs of the victim must be considered in any diversion scheme or intervention, and where appropriate a restorative approach should be used. The victim should be kept informed about diversion decisions;
 - **Devolved decision making** – responsibility for taking decisions to divert, in individual cases, should be passed to the lowest possible level – individual officers on the street or the supervisor in the police station – meaning that there is the least contact necessary between the child and the youth justice system. Decisions to caution or charge, however, should not be rushed and they should be informed by relevant information provided by local authority and health services;
 - **Speed** – the child must be diverted as quickly as possible, ideally at the time he or she is first stopped by police officers. The aim should be that all children are diverted on the day they are stopped, and where this is not possible it should happen within 48 hours of the child coming to the attention of the police;

- **Light-touch assessment** – assessments of children must not be allowed to slow down the process. It is better for professionals to assess as they go and adapt any intervention, rather than permitting any delay;
 - **Access to other services** – diversion should provide children with easy access to services as part of an integrated response to their offending. Safeguarding issues may underpin offending and should always be considered when diverting children;
 - **Leadership** – successful diversion requires strong coordinated leadership between the local authority and the police so that protocols are agreed and followed. It must include training of every officer and caseworker; and
 - **Independent scrutiny** – local magistrates and district judges should have a role in the scrutiny and oversight of how youth diversion schemes are operating so that they have assurance the right types of cases are being diverted and the response is proportionate.
60. One of the reasons, which was mooted during the review, for the over-representation of children from BAME groups in the youth justice system is a tendency for children from these communities to answer “no comment” when interviewed by the police. This means that children are prosecuted and often criminalised for an offence that, had they admitted it earlier, would have likely resulted in them being diverted away from court. This may be the result of a mistrust by children from these communities of the police and the criminal justice system. The police and local authorities must pay particular attention to the needs and characteristics of BAME children in designing and operating diversion schemes, and should monitor the rates at which these groups are diverted from court and formal sanctions compared to other children. I welcome David Lammy MP’s independent review of the criminal justice system to investigate possible bias against black defendants and other ethnic minorities, and the opportunity this presents to look at these problems in more detail.

Improving the treatment of children in police custody

61. The police should at all times see under-18s as children first and offenders second. (It is encouraging that the treatment of 17 year olds has recently been brought into line with that of children aged 10-16.) This principle should be at the heart of all of their interactions with children and embedded in all their processes. In keeping with this principle, the police should avoid bringing children into police stations if at all possible, and children should not be interviewed or held in custody suites except in exceptional circumstances. Children should only be arrested and detained in police custody where absolutely necessary, and for the shortest possible period of time. Alternatives such as home or school visits, voluntary attendance interviews or bailing children to attend a pre-arranged interview should always be considered before a child is arrested.
62. There are important safeguards and requirements that apply when a child is arrested and brought into police custody. These include the use of appropriate adults to support children, the need to inform parents or carers of a child’s detention, restrictions against placing a child in a cell with an adult, and the need to provide local authority accommodation for children who are refused police bail. I am concerned that these protections are not always in place, do not always meet

acceptable standards, and that securing them can result in significant delay with children being held far longer than is necessary. In 2015 the average amount of time that a child was held in police detention was five and a half hours, but in some cases children were held for far longer, with some detained for more than 20 hours²⁰.

When a child has been held in custody for six hours an inspector has to review the detention. This review process must be robust and challenge any unnecessary delay. I propose that children should not be held for longer than six hours unless, owing to the seriousness and complexity of the case, an inspector authorises extending the period of detention and clear reasons are provided. In addition, the Home Office should re-examine the statutory review times for detained children with a view to reducing these to three hours.

63. I welcome the move by many police forces to reduce the number of children entering custody suites through increased use of voluntary attendance and home interviews. It is important that in conducting interviews with children outside custody suites, police forces and providers of liaison and diversion schemes consider how health screening and other welfare and safeguarding checks can still be completed and inform diversion and charging decisions.

Appropriate adults

64. The Police and Criminal Evidence Act 1984 requires that all procedures relating to children are carried out in the presence of an appropriate adult whose role it is to safeguard the child's interests during police detention. This includes making sure that the interview is conducted properly and fairly, and facilitating communication with the child. An appropriate adult is defined as a responsible person over the age of 18 who has no other involvement in the case. This can be a parent or guardian or a YOT or other local authority worker.
65. My discussions with practitioners suggest that the role of the appropriate adult is ill-understood and variably exercised, and I am concerned that a lack of clarity over commissioning and accountability arrangements exacerbates this problem. YOTs are responsible for providing an appropriate adult service for under-18s. Sometimes they deliver this service themselves, while in some areas a service commissioned by the YOT provides trained volunteers or paid employees to support children throughout their time in the police station. However, in some areas there is inadequate coverage and *ad hoc* arrangements have to be made out of necessity each time a child is arrested and no parent or carer is available. This can often cause delays in an appropriate adult attending, and the adult may lack the training, information or sufficient legal awareness to perform the role effectively, the result of which can be to legitimise an unfair interview. I am also concerned that in many cases parents do not fulfil this role well. In addition to not understanding the role and the legal process, some are not supportive of their child, some exert pressure on the child to make admissions, and some antagonise or even threaten the child and police officers.

²⁰ HMIC (2015) The welfare of vulnerable people in police custody.
<http://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf>

66. I believe these concerns point to the need for greater clarity on the role of the appropriate adult, and consistency in how the service is delivered. The National Appropriate Adult Network issued a set of standards in 2013 to address many of these concerns, and while these were endorsed by the Home Office and Department of Health, compliance with these standards is neither monitored nor mandatory.
67. Further work should be undertaken by the Home Office, local authorities, the police, the Ministry of Justice, the Department for Education and the Welsh government to agree a complete set of mandatory national standards for appropriate adult schemes against which inspections should be conducted. These standards should cover:
- the role of the appropriate adult, making clear that it should be for the duration of the custody process, not just the interview, and refocusing it on welfare and safeguarding of the child rather than adherence to legal process;
 - the information and support provided to parents or guardians to help them fulfil this role effectively, and the circumstances in which it would not be appropriate for them to act as appropriate adults;
 - the expectations on timeliness of attendance, including that no child should wait longer than two hours from the point of arrest to see their appropriate adult, and should this happen there should be a presumption of releasing the child and organising a voluntary attendance interview or bail with a pre-arranged interview time;
 - training, development and support for appropriate adults;
 - the responsibilities of commissioners of an appropriate adult service and the standards they should meet; and
 - the monitoring and quality assurance of appropriate adult services, including considering whether magistrates could play a role in this.
68. At present, Her Majesty's Inspectorate of Constabulary (HMIC) inspects appropriate adult services, but YOTs, as commissioners of the service for under-18s, are not held to account for effecting improvements. Ofsted, the CSSIW and HMIC should consider the most appropriate approach to inspection of appropriate adult services and develop a framework which takes account of the roles of the local authority in commissioning the service, and both the police and the local authority in operating the scheme.

Timely access to legal advice

69. Research suggests that 43% of children who go on to be charged do not ask to see a solicitor, and that 10-13 year olds are the least likely to request and receive legal advice²¹. Where children do ask to see a solicitor, I have heard that there is frequently a delay in them attending. Given the emphasis on admissions as a pre-

²¹ Kemp, V., Pleasence, P., & Balmer, N. J. (2011). Children, young people and requests for police station legal advice: 25 years on from PACE. *Youth Justice*, 11(1), 28-46.

condition for many diversionary schemes, it is vital that children receive access to timely and good quality legal advice. I propose that children should not be required to make a decision about seeing a solicitor. Rather there should be a presumption that a solicitor is called and legal advice is provided, unless the child expressly asks not to. The Solicitors Regulation Authority should consider introducing mandatory training and agreed service standards for solicitors advising children in police custody. As with appropriate adults, there should be a presumption of releasing a child and organising a voluntary attendance interview or bail with a pre-arranged interview time if a solicitor cannot attend within two hours of a child being arrested.

Suitably trained police officers in custody suites

70. The custody sergeant performs a critical role in safeguarding the welfare of children who are detained in police custody, providing access to legal advice, diversion schemes and other services, and taking charging and bail decisions. It is the custody sergeant who must make sure children receive the protections and support they are entitled to. Yet custody sergeants are not required to have undergone any particular training in understanding the needs and characteristics of children who offend. Many children who are frightened and vulnerable may act aggressively, leading police custody staff to conclude that they are difficult rather than in need. This can lead to vulnerable children not receiving the support they require, and can put them and justice at risk. I have also heard that police officers do not always check whether a child who has been arrested is looked after. It is vital that those responsible for the care of children in police custody receive appropriate training, and I propose that the College of Policing introduces mandatory training for all performing this role.
71. In order that the particular needs of girls are met while they are in police custody, any girl aged under 18 who is arrested should be allocated a named female officer who is responsible for her welfare.

Liaison and diversion services

72. Many children who offend or come to the notice of the police do so because they have learning difficulties, or mental health or speech and communication problems²². Having health professionals in police custody suites enables screening for these and other conditions to be undertaken at a crisis point in the child's life, and better informs decisions about whether to divert or charge a child, and any services to which they should be referred. These workers also play a role at courts, but ideally health needs should be identified much earlier in the process, and certainly before charging decisions are taken.
73. NHS England is currently rolling out liaison and diversion services in police stations and courts across England. This will mean that by 2020/21, subject to HM Treasury approval, all children can be screened at their point of contact with the system – usually, but not always, at arrest. This has the potential to make a significant impact

²² See for example: Chitsabesan, P., Kroll L., Bailey S., Kenning C., MacDonald W. & Theodosiou L. (2006). Mental health needs of young offenders in custody and in the community. *British Journal of Psychiatry*, 188, 534-540. Ministry of Justice and Youth Justice Board (2012) Youth justice annual statistics: 2010 to 2011, see chapter 12: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279892/yjb-statistics-10-11.pdf

on outcomes for children. In order that these assessments can draw on pre-existing information about the child and then be shared with partner organisations, local authorities must ensure that health professionals in liaison and diversion schemes have access to children's care plans and other local authority records. I have heard how some liaison and diversion schemes have overcome this difficulty by having a local authority worker seconded to their team.

74. If children are to be diverted from formal criminal justice sanctions wherever possible and appropriate, the assessments undertaken by health staff as a result of arrest or other interaction with the police must be completed promptly and must inform disposal decisions. These assessments must be supplemented by any relevant information held by local authorities. I propose that the police, CPS, local authorities and health services establish local protocols in order that all charging decisions take account of health screening assessments conducted in police custody or as a result of the offence, and any relevant information on the child that the local authority holds. These assessments should also inform decisions to divert a child, but must not be allowed to create delay or extend a child's period of detention.

Remand to local authority accommodation

75. I have frequently heard about children who had to spend the night in a police cell because the local authority could not arrange appropriate accommodation for them to be remanded to, because the police did not request any accommodation (in the expectation none would be available), or because the test for secure and non-secure remand was incorrectly applied by the police. This is entirely unacceptable, and police and local authorities must do more to ensure that no child has to remain in police detention overnight because this statutory duty has not been fulfilled. I welcome, therefore, the work that the Home Office, the Department for Education and others are doing to establish a concordat setting out the expectations on and responsibility of local authorities and the police in preventing the detention of children in police stations following charge. In Wales a similar protocol has been developed by the Welsh government, police, local authorities and YJB Cymru. Consideration should be given to the police being required to record information about the requests they make to local authorities for accommodation in order that evidence of local authorities failing to meet their statutory duties can be acted upon.

Reducing the criminalisation of looked after children

76. Children who are looked after by the state are disproportionately represented in the youth justice system. Looked after children are five times more likely to be cautioned or convicted than children in the general population²³. While many of the factors which result in children being taken into care are also linked to offending, it is likely that the way care homes and the police respond to minor offending by this group contributes to their over-representation²⁴.

²³ Department for Education (2015) Children looked after in England (including adoption and care leavers), year ending 31 March 2015: additional tables.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483718/SFR34_2015_Text_AdditionalTables.pdf

²⁴ House of Commons Justice Committee (2013) Youth Justice: Seventh Report of Session 2012-13.
<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/339/339.pdf>

77. Although data is not routinely collected or reported, it has been accepted for many years that children in care homes are more likely to come to the attention of the police for incidents that would otherwise be dealt with by parents in the family home. Too often care home staff call the police to resolve incidents which do not merit a formal criminal justice response. Some areas, such as Surrey, Sussex and Wrexham, have trained care home workers to manage behaviour more effectively, often using restorative approaches to resolve incidents informally, and have established protocols for when it is right to call the police. All local authorities should make sure that care home staff are properly trained to resolve minor incidents without recourse to the police, and protocols should be established with police forces to agree a proportionate approach to offending in care homes. In addition, inspections of children's homes by Ofsted and the CSSIW should examine the number of, and reasons for, calls to the police.
78. Where the police are called out to such incidents, I am concerned that the requirement to record a crime (where one has been committed) sets in train processes which too often result in formal action being taken. Although government targets no longer exist in relation to detections, the culture that this fostered still exists in some forces and among some staff. Even where an incident is recorded on police systems rather than a crime, this information can identify the child and could subsequently be disclosed to a future employer as part of an enhanced disclosure.
79. In 2008 a protocol was agreed between the Department for Education, the Home Office and the Association of Chief Police Officers (now the National Police Chiefs' Council) which permits the police to deal with minor incidents involving children, notwithstanding that they amount to a notifiable offence, without a crime having to be recorded. This discretion may be exercised so long as the victim (or their appropriate adult, in the case of a child) are content that the school deals with the matter internally. The protocol was developed at a time when it was expected that many schools would have police officers routinely attached to them, and in recognition that these officers would inevitably become aware of school children behaving in a way that amounts to an offence – for example, minor thefts, scuffles and fights – but that requiring an officer to make a formal crime record might lead to the child being criminalised. The schools protocol has recently been amended to limit the offences for which crime recording discretion can be applied to cases of more minor theft, criminal damage and assault. Despite the clear similarities between schools and children's homes, and the fact that children in care are more likely to have behavioural problems than those in mainstream education, no equivalent protocol exists for children's homes. As a result, when police are called to children's homes they are required to record the matter as a crime or an incident, with the consequences that this can entail.
80. To provide greater discretion to the police, in 2013 the Home Office replaced the previous regime of detections for recorded crimes with a framework of outcomes which can be applied to all cases, including those where no formal action is taken. More recently this has been expanded, in part to respond to the increasing risk that children in the general population might be criminalised as a result of making or sharing explicit images ("sexting"). This may allow the police to identify recorded crimes where they consider it is not in the best interests of those involved to take any action other than any necessary safeguarding steps, and where any subsequent disclosure should be only be made in the most exceptional circumstances. Such an approach should be applied to minor offending in children's homes.

81. The Home Office, the Department for Education, the Welsh government and the National Police Chiefs' Council should work together to make sure that police officers are able to apply their full discretion in responding to incidents and offences in children's homes, and that there is a presumption of no formal criminal justice action being taken unless it is so serious that this is absolutely necessary. This should include consideration of adopting the schools protocol in relation to minor offences committed in children's homes. The need to record and monitor police activity, such as call outs to children's homes, should not result in personalised information about a child being subsequently disclosed.

A reformed criminal records system for children

82. The vast majority of children grow out of crime²⁵, so it is important that the way information on childhood criminality is retained and disclosed strikes the right balance between promoting their reintegration and rehabilitation, and protecting the public and employers from risk. I believe that the criminal records system in England and Wales should be more sensitive to the transitory nature of much childhood offending, and to the limited future risk of offending that most crimes committed in childhood actually present.
83. Many jurisdictions have developed or reformed their criminal records systems in recognition that a highly risk-averse response to childhood offending, coupled with the ability for records to be disclosed for many years afterwards, makes it more difficult for adolescents and adults to find a job. This in turn makes it more likely that they will continue to offend. In the United States there has been a move to reduce the negative effects of having a criminal record, particularly because of the disproportionate impact this has had on the life prospects of young black men. Recently both Texas and Kentucky have adopted systems that aim to address this challenge.
84. Some positive changes have been made to the criminal records regime in England and Wales in recent years. Many of the time periods before convictions become spent have been reduced, the circumstances in which police intelligence can be disclosed have been tightened up, and criminal records certificates are now issued to job applicants before employers, enabling individuals to dispute any information that they believe should not be disclosed. In addition, a system of 'filtering' was introduced in 2013 to prevent certain old and minor spent cautions and convictions being disclosed to employers who could previously have accessed this information. Nevertheless, it remains the case that a criminal record acquired in childhood can have far-reaching effects that go well beyond the original sentence or disposal. Certain sentences will never become spent, and certain convictions or cautions will always be disclosed when an individual seeks employment in a particular field.
85. A key principle underpinning my approach to the review is that children who break the law should be dealt with differently from adults. In my view the current system for criminal records lacks a distinct and considered approach to childhood offending. Although convictions received as a child become spent and can be filtered sooner

²⁵ See for example, Farrington D 1986. Age and crime, in Tonry M & Morris N (eds), *Crime and justice: An annual review of research*. Chicago: University of Chicago Press: 189–250. Farrington, D.P., Coid, J.W, Harnett, L., Jolliffe, D., Soteriou, N., Turner R.E. and WestHome, D.J (2006) *Criminal careers up to age 50 and life success up to age 48: new findings from the Cambridge Study in Delinquent Development*. Home Office.

than for adults, this does not truly represent a different approach to children. I propose that the Ministry of Justice and the Home Office develop a distinct approach to how childhood offending is treated by the criminal records system.

86. Attempting to judge a teenager's future risk of offending on the basis of even fairly recent criminality will often be impracticable, especially where offending is symptomatic of a crisis in the child's life. The potential benefits of disclosing such criminality appear to me to be substantially outweighed by the probable negative effects of disclosure. Equally, it must be recognised that the maturity of a 12-year-old child is very different from that of a 17-year-old, and therefore the implications for each of committing the same offence ought to be different. I believe that consideration should be given to distinguishing between under-15s and 15-17 year olds in terms of the retention and disclosure implications of offending.
87. As a point of principle, I believe that rehabilitation periods for childhood offending should be far shorter than for adult offenders. My proposals to replace existing court sentences with tailored Plans developed by Children's Panels (see Chapter 4) will necessitate changes to the relevant legislation. I believe the government should take this opportunity to reduce further the periods before which childhood convictions become spent.
88. I also believe that once childhood cautions and convictions have become spent, they should very quickly become non-disclosable, even on standard and enhanced Disclosure and Barring Service checks. In my view the system should provide for all childhood offending (with the exception of the most serious offences) to become non-disclosable after a period of time. This would not prevent the police and courts having access to the information in future, but would protect irrelevant childhood criminality from disclosure, even if a further offence is committed after the qualifying period has elapsed.
89. Finally, I believe that the circumstances in which police intelligence on childhood conduct can be disclosed should be further restricted. There is, in my view, a significant risk that operational intelligence gathered by the police for one purpose (to assist them in the prevention and detection of crime) is disclosed to a prospective employer and used for an entirely different purpose (to assess suitability for a role and any risk to the employer). I recommend that the Home Office explores the introduction of a presumption that police intelligence dating from childhood should not be disclosed except in exceptional circumstances.

Chapter 4 – Children in court

The challenges of dealing with children in the criminal courts

90. The vast majority of criminal prosecutions of children are heard in the Youth Court. This is a magistrates' court that has been adapted so that it is a less formal setting: all parties can sit at the same level; the child can have a parent or carer seated alongside them; the magistrates and judges have been specially trained and are expected to use simplified language; the court is closed to the public and automatic reporting restrictions apply. In order that more youth cases can be heard in this environment, the Youth Court has greater sentencing powers than the adult magistrates' court – it can impose up to a 24-month Detention and Training Order (DTO) compared to the adult magistrates' court limit of six months imprisonment – and so hears more serious and complex cases. Only a small proportion of youth cases are heard in the adult magistrates' court or the Crown Court²⁶. There is also a separate sentencing framework for under-18s.
91. Despite these adaptations and the best efforts of magistrates and judges, it is clear that the courts are simply not set up to ensure the full participation of children in criminal proceedings. Children are subject to what are essentially modified versions of the same processes and procedures that apply to adult defendants. Too often children are alienated by the frequent use of opaque legal argument and arcane terminology, and not all magistrates do enough to explain what is happening in language that children can understand. The courts are often large spaces and the considerable distances between the different parties do not make for effective communication, not least because in order to be heard people have to raise their voices. Children are encouraged to address the Youth Court, but are asked to do so in an environment that is completely alien to any other situation in which they might find themselves asked to speak. On many occasions children leave the court confused by the outcome and need to have their sentence explained to them by a YOT worker. All these problems are exacerbated when cases are heard in the Crown Court or the adult magistrates' courts where fewer adjustments can be made for children.
92. There were around 40,000 children dealt with in the criminal courts in 2015 – down 69% from 2007. As the number of children appearing in court has fallen, youth-trained magistrates and district judges are hearing fewer of these cases and, as a result, are finding it harder to retain and develop their expertise. The small volumes also create challenges in providing access to good quality legal representation. During the review I have been frequently told by magistrates, district judges and lawyers that the quality of legal representation in the Youth Court is often very poor. The Youth Court tries more serious cases than the adult magistrates' court because it has greater sentencing powers, yet the appearance fees for lawyers in the Youth Court are similar to those in the adult magistrates' court (which can only sentence to up to six months in custody). This is not fair because it means that children often receive poorer legal representation, in the hands of inexperienced junior barristers

²⁶ Ministry of Justice (2016) Criminal justice system statistics quarterly: December 2015.
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

or solicitors, than equivalent cases heard in the Crown Court. For example, advocates would be paid approximately £500 for a two-day robbery trial in the Youth Court compared with £1,600 were the offender an adult and tried in the Crown Court.

93. The complex circumstances surrounding many criminal cases involving children, and the profound challenges for the court in engaging the child in the process and imposing an effective sentence, was brought home to me by a case I witnessed in the Youth Court where a 14-year-old girl had spent the night in police custody because she had breached the curfew on her electronic tag by 17 minutes. She was well known to the police and the YOT, and was currently living in a care home following a string of failed placements. She was brought before the court for the breach and for two other offences. One of these involved two other defendants (themselves both in the care system and with other trials pending). The court was able to establish guilt or innocence in relation to each of the offences, but it was not capable of imposing a sentence that would begin to address the enormous and complex challenge of helping this girl to get her life back on track and to stop offending.
94. The youth justice system has a statutory aim to prevent offending, but the criminal courts are not equipped to identify and tackle the issues that contribute to and prolong youth offending. A large proportion of the young people who appear in court are prolific offenders, and most have significant welfare issues. Many are themselves victims or at risk of harm; many have been or are in care, or come from chaotic families; and many have learning difficulties or health needs. Yet courts do not have the time or the means to direct and supervise the essential work that is needed to help these children to break the cycle of offending. Equally, the available sentencing options lack the flexibility and rigour to respond to the complex and changing needs of children who offend.
95. Magistrates frequently report that they impose a sentence without having a real understanding of the needs of the child, and they rarely know whether it has been effective. It is possible for the bench to hear about breaches or further offences, but only if one of their number happens to be sitting on the day when that child is brought back to court. There is little scope for the courts actively to manage a child's sentence and rehabilitation, to reward success or to amend the terms of the sentence where the child is not responding, or to hold agencies to account for providing the necessary support.
96. This very limited role for the court is in contrast to other jurisdictions where judicial oversight is considered an essential part of making sure that sentences are responsive and effective. In Spain, youth court judges monitor the progress of the children they have sentenced, including visiting them and checking on their progress in custody. They also have the ability to vary the terms of the sentence depending on the child's progress and specific needs. Similarly, when a child in Scotland aged under 16 admits an offence or is found guilty in the Sheriff's court he or she is referred to the Children's Hearings System. Hearings are made up of a panel of three lay people who are trained to investigate the causes of the child's offending and any other difficulties. This is done in conjunction with other services such as social care, and with the child's parents or carers. At the end of the hearing decisions are made on the measures that should be taken, such as compulsory supervision or time in custody. The panel will clearly set out what each party will do

to help things to change. These measures are reviewed by the panel which can vary their length and terms if necessary.

97. One consequence of the courts' inability to play a continuing role in a child's rehabilitation is magistrates and judges resorting to the use of short custodial sentences. Custody should always be a last resort for children, but frequently it is used because all other sentencing options have been exhausted rather than because the seriousness of the offence merits immediate detention. In 2015 there were around 1,000 children sentenced to spend between two and five months in custody as part of a DTO²⁷. (Half the sentence is spent in custody and half under supervision by a YOT in the community.) These short custodial sentences often break vital links with family, education and support services, and provide little opportunity for secure establishments to tackle the child's problems. Children fail to settle in secure provision and do not feel it is worth investing in the regime or building the relationships with staff members that would help them to make progress. For looked after children, these short custodial terms simply replicate their experience of temporary placements in foster care or children's homes. It is little wonder, then, that the reoffending rates of children released from short custodial sentences are the highest of any cohort: 80% for those serving under six-month sentences, and 73% for those on six to 12-month sentences²⁸. It is my view that short custodial sentences for children are ineffective, costly and detrimental to their rehabilitation. If children must be sentenced to custody, it ought to be for a period of time in which there is a realistic chance of changing their behaviour, improving their mental and physical health, and raising their educational attainment.

A stronger role for the courts in rehabilitating children

98. The criminal courts in England and Wales need to do more to tailor the way they operate to the needs of children. Too often children are the passive recipients of justice and do not understand the process to which they have been subjected. In addition, the way children are currently dealt with in the criminal courts does not provide sufficient opportunity to understand the causes of their offending. Courts lack flexibility in the use of sentences, and magistrates can play little or no role in overseeing a child's progress against the sentence they have passed. Some children have said that they would welcome some form of follow up with magistrates and felt that it might contribute to their rehabilitation. In order that children are given the support they need to stop offending I propose a new system of Children's Panels which can take an individualised approach to rehabilitating children, and can make better use of the skills of magistrates and others with experience of working with children.
99. Children's Panels will create a clear distinction between the process of establishing guilt in contested cases and the process of deciding and monitoring the action that should be taken to repair harm and rehabilitate the child. Courts will continue to perform the first of these functions; Children's Panels will take responsibility for the second in the development and oversight of a Plan for the child.

²⁷ Ministry of Justice (2016) Criminal justice system statistics quarterly: December 2015. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

²⁸ Ministry of Justice (2016) Proven reoffending statistics quarterly: July 2013 to June 2014, Table C2b. <https://www.gov.uk/government/collections/proven-reoffending-statistics>

Improving justice for children in court

100. Wherever possible youth offending should be dealt with informally outside court; but where a prosecution is required there may be circumstances where a court hearing is not necessary. A great number of children currently appear in court having pleaded guilty to minor or first-time offences and where the only sentencing option realistically available to the court is a Referral Order the terms of which are not even set in court. Under a new system of Children's Panels, consideration should be given to whether court hearings should only be required where a child pleads not guilty, or where the case is so serious that it must be tried and sentenced in the Crown Court.
101. It is also important that where a child is prosecuted, the process is prompt and swiftly completed. For a child to learn from their mistakes, the consequences of an offence must follow quickly. Children have reported being frustrated by lengthy court processes and feeling that their life is on hold until proceedings have concluded. A significant delay before a trial begins not only harms victims, it also undermines the impact on the child of the court process and the sentence they receive. A matter of weeks can be a long time in the life of a child, and sometimes their circumstances have spiralled out of control before the courts have been able to deal with the initial offence. Equally, it is not desirable that children turn up in the Youth Court at the beginning of the day's sitting and must wait for their trial or sentencing hearing to commence. This is time children should be spending in school, college or training. Charging decisions, court appearances (where they are required) and the convening of a Panel should all be expedited for children if they are to appreciate the consequences of their actions and respect the system that deals with them. I urge the judiciary to consider further what can be done to prioritise cases involving children and to make sure that they are not kept waiting at court unnecessarily.
102. When parents and carers attend court with their child, they are often only on the periphery of proceedings. They have a vital contribution to make to their child's welfare and rehabilitation and should be a much more integral part of the court process. There will, of course, be cases in which it would not be helpful for the parents to be involved, but the expectations of parents and carers must be higher. Court summons should make clear that both parents are expected to attend court hearings unless there are specific reasons in relation to the child's welfare why they should not, and looked after children should always be accompanied by their carer or social worker. I have been particularly concerned to hear that, when looked after children appear in court there is often no carer or any representative from the local authority. This is not acceptable and when this happens, the court should be able to make representations to the local authority's Director of Children's Services and, if necessary, require an explanation to the court. Children's Panels will require the child's parents or carers to attend and will often place requirements on them as part of a Plan (including on a parent who the child does not live with). The Panel will also be able to direct the parent or carer as appropriate, where they feel it is required.
103. Engaging children in the court process, ensuring it is intelligible to them, and supporting them to give their best evidence is a skill. Those participating in youth cases must also understand the different legal framework in which they are operating, and the duty on the court to promote the welfare of the child as well as to prevent offending. The Youth Court is, and must be recognised as, a very different environment to the adult magistrates' court or the Crown Court.

104. Magistrates and members of the Crown Prosecution Service appearing in the Youth Court are specially trained to undertake these roles, but defence lawyers are not required to have specialist training before they appear in the Youth Court. This problem is compounded by the lower fees paid to lawyers in the Youth Court than they would receive for the same or less serious case involving an adult in the Crown Court. Both the Bar Council and the Solicitor's Regulatory Authority recognise the need for defence lawyers to be appropriately skilled for working in the Youth Court. Some chambers and law firms lay on additional training for lawyers working in the Youth Court, and Just for Kids Law provides training to solicitors and barristers. I believe there is a strong case for insisting that all lawyers appearing in the Youth Court are specifically trained. I am also extremely concerned that children, in what are often complex and challenging cases, should be any less well represented in the Youth Court than an adult would be in the Crown Court in a case of equivalent seriousness. I therefore recommend that the Ministry of Justice reviews the fee structure of cases heard in the Youth Court in order to raise their status and improve the quality of legal representation for children, and when this is complete, that the Bar Standards Board and the Solicitors Regulation Authority should introduce mandatory training for all lawyers appearing in the Youth Court.
105. Having witnessed in the Crown Court several trials involving children, it is my view that cases should, if possible, be heard in the Youth Court. The Crown Court is an intimidating atmosphere for children and its processes and physical layout are not easily adapted for children. I spoke recently to a barrister involved in the trial of two girls accused of murder who described the atmosphere in the court – which is open to the public and reporters – as 'like a circus'. It is difficult to see how, in such circumstances, the court can fulfil its statutory duty to promote the welfare of the child. In addition, Crown Court judges seldom hear cases involving children, and expecting them to develop or retain the skills for dealing with children and their parents is unrealistic. The Ministry of Justice should consider introducing a presumption that all cases involving children should be heard in the Youth Court, with suitably qualified judges being brought in to oversee the most complex or serious cases in suitably modified proceedings. The Crown Court should be reserved for exceptional circumstances, including cases featuring adult co-defendants where it would not be in the interests of justice to try the child separately, and for the sentencing of the most serious offences. Ultimately, when the Youth Court has acquired a higher standard of representation and the fees paid to lawyers better reflect the seriousness of the cases it deals with, consideration could be given to trials involving children no longer taking place in the Crown Court.
106. Where cases must be heard in the Crown Court, judges should do more to make the trial process less intimidating and easier to understand. The presumption should be that children should sit in the well of the court with their parents and lawyer. Children should only be placed in the secure dock where they are at risk of absconding or committing acts of violence, and the fact that a child has been securely remanded should not mean that he or she is automatically placed in the secure dock. The court should avoid making the same assumptions about children that it does about adults. Whether a reporting restriction is imposed or not, the number of journalists and members of the public in the court room should be limited to a handful every day, with any additional reporters watching the trial relayed on a display screen in a separate room in the court.

107. Further consideration should be given by the Ministry of Justice to whether the law on youth reporting restrictions should be amended to provide for them to apply automatically in the Crown Court (as they currently do in the Youth Court), to children involved in criminal investigations and for the lifetime of young defendants. The current position seems unsatisfactory as the identity of a child suspect may be reported during a police investigation before criminal court proceedings have even commenced. This can then undermine any youth reporting restriction that later applies in court. Equally, once the child turns 18 years of age their name may once again be reported, which risks undermining their rehabilitation as their identity could be established on the internet even though a conviction may have become spent for criminal records purposes.

A new system of Children's Panels

108. The introduction of Children's Panels will transform the way that the justice system deals with children who are convicted of an offence by replacing most sentencing currently undertaken in the court. The Panel will investigate the causes of the child's behaviour, including any health, welfare and education issues, and put in place a rigorous Plan that will tackle the factors associated with the offending and give victims and communities assurance that the behaviour is being addressed. The Panel will then monitor progress in delivering the Plan as appropriate. The same Panel members will oversee the Plan until its completion. This monitoring and follow up by a single person is viewed as an essential component in the success of problem-solving courts in the United States²⁹, and there is evidence that a key factor in children stopping offending is feeling that they are held in mind by somebody of substance who has their best interests at heart and believes they can change³⁰. Many children in the youth justice system, particularly those in care, have never had that experience.
109. Children would be referred to a Panel when they plead guilty to a charge or have been found guilty in the Youth Court. Children who have been given a sentence of less than two years in custody by the Crown Court will also be referred to a Panel. It is essential that there is the shortest possible gap between the offence and the Panel meeting for the first time. It is counter-productive for agencies to complete protracted assessments of the child if it means that by the time the Panel meets the child has got into a deeper spiral of offending without the help he or she needs.
110. The Panel will be made up of three lay magistrates – potentially from a new cadre of magistrates trained to work differently with children - and will be able to convene in any suitable building, such as a town hall, a school or the youth offending service's offices. One of these members will chair the Panel. At the Panel's first meeting it will develop a Plan for the child's rehabilitation. The child will attend with their parents or carers and their keyworker from the local authority, and may have legal representation. In addition the Panel may ask for other professionals such as

²⁹ Porter, R., Rempel, M., & Mansky, A. (2010). What makes a court problem solving?: Universal performance indicators for problem-solving justice. Center for the Court Innovation. http://www.courtinnovation.org/sites/default/files/What_Makes_A_Court_P_S.pdf

³⁰ See for example: Adler, J. R., Edwards, S., Scally, M., Gill, D., Puniskis, M. J., Gekoski, A., & Horvath, M. A. (2016). What works in managing young people who offend? A summary of the international evidence. Ministry of Justice. <http://eprints.mdx.ac.uk/18848/1/youth-justice-review.pdf>. HM Inspectorate of Probation (2016) Desistance and Young People <http://www.justiceinspectorates.gov.uk/hmiprobation/inspections/desistance-and-young-people/>

teachers or health workers to attend, or they may ask for additional information to help them to make decisions.

111. The Plan which the Panel develops must meet the aims of rehabilitating the child, promoting his or her welfare, and protecting victims and the public from harm. Rather than being simply a series of requirements or prohibitions which a child must not breach, the Plan will contain specific and positive goals against which success can be measured and recognised by the Panel. The child and his or her parents or carers will be an active participant in the design of the Plan and the monitoring of its delivery, with all parties – the child included – held robustly to account for their contribution to its success. Plans will be published – with names and any other means of identifying the child removed – so that the process is open and transparent.
112. The Panel must take a comprehensive view of the difficulties a child is facing and the risk that they present, and develop a Plan which sets out clear steps to be taken in overcoming these. The Plan could include a range of options, such as a restorative justice process, a behaviour modification programme, reparation to the victim or to the community (though this should always be linked to a skill or qualification that will help the child to find work or training), attendance in school, work or college, or support or engagement from health, welfare, housing or other services. The Plan may place expectations on parents or carers, social care, housing, health and education services, and could include the provision of parenting classes or multi-systemic family therapy. Depending on the seriousness of the offending the Plan will also be able to impose restrictions on the child's liberty, including curfews, travel restrictions, electronic monitoring, intensive supervision or, as a last resort, placement in a Secure School or other custodial establishment. These elements of the Plan must respond to a demonstrable risk that the child presents. The Plan must be developed within overarching sentencing guidelines set by the senior judiciary to make sure that it is fair and proportionate, and the Panel must have access to legal advisers.
113. The Plan will also include a process for regular reviews of the case by the Panel. The terms and regularity of this review will vary depending on the needs of the child and the seriousness of the offending. Where the offending is less serious or the child does not have complex needs, the content of the Plan would be straightforward, and monitoring by the Panel would be done with a light touch. For persistent offenders and those with entrenched welfare problems, a more comprehensive Plan is likely to be developed, with the Panel taking a more active, problem-solving approach to overseeing its delivery. A child should not, however, have multiple Plans. Given the complex nature of some children's offending behaviour and history, new convictions should be referred to the child's existing Panel so that it can decide whether to amend the existing Plan or draw up a new one. Panel members will need to make sure that the review process is positive and supportive and does not become a mechanism whereby a child is unnecessarily pulled further into the criminal justice system. These reviews will provide a level of local scrutiny of services for children who offend that can never be achieved centrally, and will mean that local authorities are held to account for making sure that the child and his or her family get the support that they need.
114. Reviews will always be attended by a Panel member, the child, the parents or carers, and the child's local authority keyworker. Others may be invited as necessary, but legal representation would not be required unless a material change to the Plan was being proposed. The review will be an opportunity for the Panel

member to see how the child is progressing, and will enable him or her to respond quickly to successes and failures, having the ability to relax and strengthen requirements as necessary. The Panel member will also make sure that the other parties are fulfilling their part in delivering the Plan, with a power to investigate if, for example, the local authority or health services have failed to complete the actions they agreed to in the Plan. If necessary, the Panel chair would be able to ask a senior representative from the relevant agency to attend and to provide additional information or respond to concerns. If the Panel member feels that a material change should be made to the Plan, the full Panel will be reconvened and the child would be entitled to legal representation. The Panel will be able to strengthen or relax the terms of the Plan, remove or add terms, or reduce the length of the Plan or terminate it if the child is doing well. The Plan will otherwise continue up to its pre-defined limit.

115. The make-up of the Panels will be critical to their success. They must comprise members who are able to engage and motivate children, and who have the clout and the independence to hold agencies to account. Many current youth-trained magistrates will be attracted and well suited to this role, but I would also like to see a wider range of people coming forward, in particular those who are experienced in working with children. It is essential that Panels are not seen as mini-courts, but as a completely different way of dealing with children who break the law. Existing magistrates and new recruits will need additional training to enable them to perform this role. With the right members and the right ethos, I believe Panels have the potential to drive individualised and local solutions to offending, and to work collaboratively and innovatively with education, children's and health services.
116. It is, however, important that the Children's Panel system does not lead to an increase in the number of children who are prosecuted. Children should always be dealt with at the lowest tier of the youth justice system, and so it is therefore essential that the police, local authorities and health services operate effective diversion schemes which seek to address a child's problems outside court.

Plans with a custodial element

117. In cases where a child has committed a serious offence, Panels may decide that the Plan should include a period spent in custody. While I would wish to give Panels considerable freedom to determine the right response to individual children, for the reasons outlined above I believe the government should remove or substantially restrict the availability of short custodial sentences. If a child is to be sentenced to custody, it is my view that the minimum amount of time they should spend in detention is six months (equivalent to the current 12-month DTO). The only exceptions to this should be those few offences for which Parliament has established mandatory minimum terms. I also believe that there should be a presumption that Children's Panels will only give children aged under 16 a Plan with a custodial element in exceptional circumstances, and usually where they pose a significant risk to the public.
118. Short custodial sentences are often given once a court has exhausted non-custodial options and run out of patience with an offender, but children should not be sent to custody because services in the community have failed them. I believe the ability of Panels to develop bespoke, flexible and robust Plans for persistent offenders can remedy this problem and provide a much more effective alternative to custody than current community sentences. I also believe that if Secure Schools are to provide

much enhanced education and rehabilitation services in a therapeutic environment, they need to have children for a meaningful period of time – at least six months, more akin to an academic school year.

119. It is essential that there is, however, close monitoring by the government of such a change to make sure that children who would have received a short custodial sentence are not instead sent to custody for longer periods of time. Any community or custodial Plan should place the child's welfare at its heart whilst giving assurance to the victim and to the public that they will be kept safe and that the child will be helped to change. The government should review the effects of this new custody threshold, particularly on reoffending rates, and in the future should consider raising it to 12 months.
120. Where Plans include a period in custody, they will also contain targets for the child and the establishment to achieve during the period of detention. These should be informed by Secure School staff who should take part in reviews by the Panel during the child's time in detention. These review meetings should be held in the custodial establishment, and the Panel will be able to recommend greater freedoms such as temporary release to enable the child to go out to school, work or college during the day, or to reward progress towards the end of the child's term by allowing them to spend nights at home. Where the child has failed to fulfil the terms of the Plan the Panel will also have the power to allow the period in detention to continue up to its maximum pre-defined limit so that it may be completed successfully. Most importantly, the Plan will also provide for the child's release from custody to make sure that his or her reintegration is managed seamlessly. Panels will also be able to take account of school or college term times when they impose periods of detention, so that children can leave ready to start courses on time.
121. Where a child is sentenced in the Crown Court for the most serious offences (under s.90 or s.91 of the Powers of Criminal Courts Act 2000, or section 226B of the Criminal Justice Act 2003), the case will be referred to the Panel to develop a Plan for this child's time in custody and, if they are not to transfer to an adult prison, their release into the community.

Reducing the use of secure remand

122. By removing the option of short custodial sentences, I would hope to see fewer children securely remanded by the courts as not so many would have a realistic prospect of receiving a custodial sentence – the criteria for use of secure remand. Nevertheless, it remains the case that too many children are securely remanded by the courts when alternative arrangements could be made. I would like to see whether further changes could be made to the conditions for a remand to youth detention accommodation to make sure that custody is always used as a last resort.
123. Local authorities are now financially accountable for their children who are securely remanded, but they have limited opportunity to invest this money in alternative accommodation or, at an earlier stage, prevention work. The devolution, over time, to local authorities of the funding and commissioning of all youth custody will provide an even stronger incentive for local authorities to reduce their use of secure remand.

Chapter 5 – Secure schools

What is youth custody for?

124. This review is clear, as are the sentencing guidelines for the courts, that children should only be sent to custody as a last resort, and that the child's welfare should be taken into account in any sentencing decision. If children have committed serious violent offences, victims must have the assurance that they and the wider public are protected from further harm. When children are sent to custody it is the deprivation of liberty that is the punishment. In custody children lose both their freedom and direct and immediate contact with their families and their friends. The aim then is to help them to overcome their difficulties, address the causes of their offending and prepare them for successful reintegration into society when they are released. Many of the children who offend come from complex and chaotic families, they are entrenched in established patterns of offending and need considerable help to change. There is an understandable temptation to send children to custody to address their many problems, but this should be resisted. The reason for sending children to custody should not be to fix them. Nevertheless, when children are incarcerated the state has a moral duty to fix them.

The youth custodial estate today

125. There are currently around 900 under-18s in England and Wales in youth custody³¹. In 2008 the average number of children in youth custody was around 3,000. This significant and rapid decline in the youth custodial population has had a profound effect on the make-up of the secure estate, with the YJB reducing places in all three sectors of youth custody. Since the start of 2009 more than 2,000 places in YOIs have been decommissioned, including the closure of 12 separate YOIs. In addition, Hassockfield Secure Training Centre (STC) in County Durham has closed, and there are 95 fewer places commissioned in Secure Children's Homes (SCHs).
126. The result is a smaller youth custodial estate, but one which has been arrived at by adaptation of an existing unsatisfactory estate rather than by design. Having fewer youth custodial establishments means that on average children are now accommodated further from home, increasing journey times to and from court and undermining efforts at resettlement. Similarly, managing disruption and problems associated with gang affiliations has become more difficult in a smaller estate.
127. A smaller youth custodial population made up from the most persistent and troubled children demands enhanced and integrated services and skilled staff. I have witnessed an impressive level of dedication, determination and courage from staff who work in extremely challenging circumstances to make their institutions safer and more productive places for children. The reality is, however, that many staff working in YOIs and STCs do not have the skills and experience to manage the most vulnerable and challenging young people in their care, nor have they had sufficient training to fulfil these difficult roles. This has been compounded by staff

³¹ Ministry of Justice and Youth Justice Board (2016) Youth custody report: September 2016. <https://www.gov.uk/government/statistics/youth-custody-data>

shortages in public sector YOIs which have resulted in children spending too much time in their cells and receiving inadequate access to health, education and rehabilitative services, or being looked after by members of staff who they do not know.

128. The result has been increasing levels of violence in recent years, both in assaults on children and on staff. The number of assaults each month per 100 young people in custody rose from 9.0 in 2009/10 to 16.2 in 2014/15³². There also seems to be a change in the nature of some of this violence in which assaults by a group of children on a single child have become more common. Often the children who are the least settled are those who are serving short sentences or who are remanded in custody. These children are not in the institution for long enough to address their educational, health or social difficulties, nor do they adapt to or accept the rules and expectations of the regime.
129. In order to reduce reoffending and transform the lives of the children coming into the secure estate, with all the challenges this population presents, fundamental change is needed to the current youth custody system.

Health in custody

130. The health of children in the criminal justice system is frequently very concerning, but health problems are particularly acute among those entering the secure estate. More than a third of children in the youth custodial estate have a diagnosed mental health disorder, often layered with several other needs, making them a complex and vulnerable cohort to assess and treat³³. These figures may well underestimate the problem, because the chaotic lives led by so many of the children in the secure estate means they have never been referred to mental health services, or have failed to turn up for appointments. Children in custody often also display poor physical health. Many will not have visited a doctor or dentist for years, and as a result some arrive in custody with undiagnosed sight or hearing problems which will have affected their education. Many will have problems associated with poor diets or drug and alcohol use.
131. A period in custody provides an opportunity to conduct thorough assessments and to begin to address many of these problems. While many children leave custody physically healthier than when they came in, I am concerned that the same progress is not always evident in tackling children's mental health problems. Improving children's mental health needs to be a seam that runs through the culture and operation of the entire institution, and not just a bolt-on service delivered through weekly therapy sessions. To make real progress, children need to be in a therapeutic environment in which everyone who works in an establishment understands what is needed to help children to cope better and to address the root causes of their offending, and has the expertise and the commitment to achieve this. Often intensive treatment or intervention will be required before a child can begin to

³² Ministry of Justice and Youth Justice Board (2016) Youth justice annual statistics: 2014 to 2015, Table 8.14. <https://www.gov.uk/government/collections/youth-justice-statistics>

³³ See for example: Hughes, N., Williams, H., Chitsabesan, P., Davies, R., & Mounce, L. (2012) Nobody made the connection: The prevalence of neurodisability in young people who offend. London: Children's commissioner. Gyateng, T., Moretti, A., May, T., & Turnbull, P. J. (2013). Young people and the secure estate: needs and interventions. London: Youth Justice Board.

engage in education and other activities, and the regime must provide for this. The best alternative provision schools and residential health facilities achieve this integration of health, welfare and education services, and youth custody must learn from them to develop a psychologically-informed approach. It is then crucial that when children are released they continue to receive the support they need from connected services in the community.

132. To achieve this level of integration, and to enhance the education and reoffending outcomes of detained children, health provision needs to feature much more prominently in the commissioning, leadership and governance of youth custody.

Education in custody

133. There are strong links between education and offending. Half of 15-17 year olds entering YOIs have the literacy or numeracy levels expected of a 7-11 year old. Around 40% of young people surveyed in under-18 YOIs reported that they had not been to school since they were aged 14, and nearly nine out of 10 said they had been excluded from school at some point³⁴. In my view, making sure that children are in full-time education or employment can be one of the most effective ways to prevent youth crime³⁵.
134. Recent attempts have been made to increase the focus on education in custody, but progress has been slow. New education contracts in public sector YOIs promise 30 hours of education a week, but on average children in these establishments are receiving only 15 hours. Staff shortages and rising levels of violence have prevented this ambition from being delivered, and in some cases children must sacrifice time spent associating with their peers if they are to attend classes. At times the education contracts appear to be preventing children from getting access to therapy sessions or meetings with YOT or substance misuse workers. If disincentives have been created for children to learn in custody, it is clear that what is best for children has at times become secondary to containment, the management of risk and establishing uniform processes. Rather than preparing children for life on the outside, too often these establishments seem to be teaching children how to survive in prison.
135. Teaching methods throughout the secure estate have not kept pace with changes in our schools. I was surprised to hear reference to children's learning styles despite clear evidence that such an approach to teaching is neither necessary nor effective. Equally, I have serious concerns about the teaching of reading. Many teachers I have spoken to in custody were not able to describe how reading is taught in their establishment. Children in custody should be taught to read using phonics, and every teacher working in custody must understand how it is taught if they are to play their part.
136. Expectations of children should not be adjusted because, at times, their behaviour can be very difficult. There is a great temptation to take the easy option and to place children only in the classes or the courses that they enjoy most. There is lots of

³⁴ HM Inspectorate of Prisons (2015) Children in Custody 2014-2015: Appendices.
<https://www.justiceinspectorates.gov.uk/hmiprison/inspections/children-in-custody-2014-15/>

³⁵ See for example: Machin, Stephen, Olivier Marie, and Sunčica Vujić (2011) The Crime Reducing Effect of Education. *Economic Journal* 121, 463-484.

vocational training happening in custody, but there needs to be a sufficient focus on the building blocks of English and maths as well. There are few jobs now that do not require good levels of literacy and numeracy. However they arrive, children must not leave custody still unable to read. I have often heard complaints that children going into custody are unable to finish courses or sit public exams that they have been working towards for years, and that some qualifications gained in the secure estate have little value to children when they leave. These structural problems increase the chances of academic failure and disconnection from education, and therefore funnel children towards criminality.

137. There is also not sufficient provision for high-ability children who are capable of getting the top grades in their GCSEs and to go on to take A-levels and prepare for university. In one case, a boy on a long sentence described how he wanted to go on to take maths A-level having achieved an A in his GCSE. The institution said there was no one to teach him, and yet just yards away is a successful grammar school that through its Teaching School would, I am sure, have been delighted to help. This is typical of the isolation from outside services and expertise that is, too often, a hallmark of the secure estate, and it can easily lead to an acceptance of the status quo and low expectations of children.
138. Children who are incarcerated must receive the highest quality education from outstanding professionals to repair the damage caused by a lack of engagement and patchy attendance. Perhaps the most worrying finding is that in youth custodial establishments I have rarely encountered the culture of aspiration and discipline which is evident in the best alternative provision schools, and whose pupils share many of the characteristics of children who are incarcerated. Even in those custodial establishments where the quality of education is better, there is still a clear gulf between this provision and the best to be found in the community.
139. In seeking to improve this situation it must be recognised that there is a limit to how successfully a productive culture of learning can be instilled in a prison environment governed by the attendant rules and procedures, and established principally as a place of detention. I have been struck how leaders of youth custodial establishments have little freedom to innovate or effect changes to their regimes, to commission the services they require, or even to recruit and train their own staff. In YOIs they have to try to make a model devised for adults work with children, and in STCs operators can become slaves to the myriad terms of their contract. In addition, different rules, inspection frameworks and levels of resource constrain the sectors of youth custody.
140. If a radically different vision for youth custody is to be realised, the government must look to successful alternative provision schools. Alternative provision describes schools for children who are unable to attend mainstream or special education, and include pupil referral units and other institutions run by academy trusts or third sector organisations, many of which specialise in supporting children with behavioural difficulties. In recent years a number of alternative provision free schools have opened in England funded by the Department for Education and local authorities, and have in many cases proved highly effective in working with some of the most challenging children who have been excluded from mainstream schools. These include Everton in the Community and Derby Pride, both connected to local football clubs, Stone Soup Learns run by a third sector organisation in Nottingham, and the Academy of Central Bedfordshire set up by a group of mainstream schools. The best alternative provision schools combine rigorous teaching and high standards of behaviour with the therapeutic approach needed to make sure that

children are able to engage fully in learning. It is this expertise that needs to be drawn into youth custody.

Secure Schools

141. In order that education is truly placed at the heart of youth custody, I believe that the government must reconceive youth prisons as schools. I propose the creation of Secure Schools. These will be smaller custodial establishments of up to 60-70 places which are located in the regions that they serve. They should be set up within schools legislation, commissioned in England in a similar way to alternative provision free schools, and governed and inspected as schools. Rather than seeking to import education into youth prisons, schools must be created for detained children which bring together other essential services, and in which are then overlaid the necessary security arrangements. Education, health and offender desistance programmes need to be at the heart of work to rehabilitate children.
142. Importantly, head teachers in these Secure Schools will have the autonomy and flexibility to recruit and train their own staff, to commission vital support services (including a stronger role in commissioning health services such as mental health and speech therapy), to establish the approach to managing behaviour and rewarding success and, as a result, to create a productive and therapeutic culture which will raise attainment, improve behaviour and promote rehabilitation. Children will receive a bespoke package of support and an education that will address their difficulties and their offending behaviour, as well as giving them the skills, knowledge and qualifications that will help them to succeed when they are released. These schools will also work closely with parents and have greater ties to education and other services in the community, perhaps as part of a multi-academy trust, aiding more effective resettlement and continued access to education, training or work after release. These schools will give support to children to reintegrate successfully into society including, where appropriate and safe, giving greater opportunities to attend education and training back in their communities.
143. An improved and better integrated health offer must be at the heart of Secure Schools if children are to overcome the problems that have led them into offending and acted as barriers to educational progress. Head teachers will have more influence over the health provision in Secure Schools and an integral role in the commissioning and oversight arrangements, including acting as co-commissioner and sitting on the board overseeing the quality and performance of healthcare. Similarly, the health lead in a Secure School should be part of the establishment's senior management team, and the Trust which governs the school will need to hold the senior management team to account for all aspects of provision. The creation of a successful school for the most troubled and challenging children must have a psychologically-informed ethos running through all its interactions with children.
144. The quality of staff in Secure Schools will be critical to the success of these institutions. Head teachers must have the freedom to recruit staff with the experience, the skills, the passion and the commitment for improving the lives of extremely challenging children. While I believe that many staff working in the current youth custodial estate are not equipped to carry out their difficult roles, I also believe that the staffing model adopted in these establishments exacerbates the problems of engaging and safeguarding children. YOIs and STCs employ many teachers, health workers and staff providing pastoral support, but they also have a large number of guards and officers whose principal role is to control children, enforce rules and

prevent and respond to disorder and violence. I believe that having a distinct group of staff performing this role actually raises the risk of violence, and they can fall back on coercion or physical restraint when confronted by a resistant child. Alternative provision and special residential schools do not have such a group of staff because everyone working there has experience and expertise in working with children, preventing and managing conflict, and ensuring compliance with the rules through support and persistence. Similarly, secure children's homes do not employ a separate group of security staff. In Secure Schools I would like to see behaviour management in the hands of skilful, well trained education, health and welfare support workers. I believe this would go a long way to preventing the risk of mistreatment of detained children, and would be more effective than, for example, introducing a duty of candour on staff.

145. I have discussed with the Ministry of Justice and the Department for Education how Secure Schools in England could be commissioned and governed, bringing together the duties and safeguards which pertain to custody with those which apply to schools. These departments will need to work closely together to develop the framework for Secure Schools. In the short to medium term I envisage places in Secure Schools being commissioned by central government, but in the longer term the commissioning responsibility and custodial budget for youth custody should be devolved to local areas or regional bodies (see Chapter 2 above). Over time I would expect Secure Schools to replace most existing youth custodial provision. There will continue to be a need for more specialist provision for the youngest and most vulnerable children remanded or sentenced to custody, as currently provided by SCHs.
146. The position is different in Wales where responsibility for education is devolved to the Welsh government. The Ministry of Justice will need to work closely with the Welsh government to explore how Secure Schools could be created in Wales, making sure that there is broad consistency in the approach while tailoring it to reflect the devolved arrangements and to achieve integration with wider services for children in Wales.
147. I am pleased that as a result of my interim report a number of schools and organisations have shown an interest in setting up a Secure School in England. In advance of legislation to create Secure Schools, the Ministry of Justice and the Department for Education should explore the opportunity to establish early adopter Secure Schools within the existing legislative framework to test key elements of the model.
148. In developing a network of Secure Schools, the Ministry of Justice and Department for Education must give particular attention to the provision for girls. There are currently under 40 girls in the youth custodial estate³⁶, and their needs are often very different to those of boys. Many girls in custody have suffered abuse and are extremely vulnerable, and self-harming is common. As a result many are accommodated in SCHs. I believe the Secure School model is capable of meeting the needs of most girls and providing a safe and supportive environment for all children. I do not propose that the government creates girls-only Secure Schools as this would likely result in children being placed a very long way from home, putting

³⁶ Ministry of Justice and Youth Justice Board (2016) Youth custody report: April 2016. <https://www.gov.uk/government/statistics/youth-custody-data>

at risk their relationships with family and carers and making resettlement more difficult. Although head teachers of alternative provision and special schools are experienced in running mixed-sex institutions educating some of the most challenging boys and girls, the commissioning, governance and inspection arrangements will need to pay particular attention to how the needs of girls are met in a secure setting in which boys are in the overwhelming majority.

149. Careful thought also needs to be given to meeting the needs of detained transgender children. The Secretary of State commissioned a review to look at provision for transgender people, including those aged under 18, in our prison system, and I have been liaising with officials supporting this work to make sure that full consideration is given to the needs of transgender children, as well as adults.

Better resettlement

150. Effective resettlement when children are released from custody is essential if they are to continue their rehabilitation and reduce reoffending³⁷. This requires a coordinated approach from the secure establishment, education, health, housing, social care and youth offending services. Many children find it hard to manage the transition from a closed and contained environment where they are able to make few decisions for themselves, to the freedoms of being back in the community, and often children have had little or no opportunity to be released on temporary licence to adjust to this change. In addition, children frequently do not know where they are going to live until days before they are due to be released. This can be for a number of reasons, including uncertainty about whether their families will take them back, insufficient preparation by the local authority to find suitable accommodation, and reluctance on the part of the local authority to pay in advance to retain accommodation for children for when they are released. One YOT worker described desperately telephoning the social care and housing departments in her local authority to find a place for a child who she had gone to collect from custody and who was sitting beside her in the car.
151. These levels of uncertainty are not acceptable. Children are already anxious when they leave custody, and for many their response to this anxiety is to go back to old friends and old habits. Some children are placed in unsuitable accommodation and will revert to sleeping on friends' sofas rather than stay somewhere where they are not cared for or do not feel safe. I have heard that children who are looked after often find that they have a different social worker managing their case when they come out, and if they are moving to a new care home they often find that there are few, if any, familiar faces. Local authorities should always aim to retain the same social worker during a child's time in custody.
152. I have also been surprised by how many children I have met in custody who do not know what they are going to do when they are released, and how often the differing thresholds for health treatment (particularly mental health) between custody and community services mean that a child's access to support breaks down at the point of release. Equally, YOTs have reported difficulties in getting access to children while they are in custody. If children are to resettlement well, then knowing where they

³⁷ See for example: Adler, J. R., Edwards, S., Scally, M., Gill, D., Puniskis, M. J., Gekoski, A., & Horvath, M. A. (2016). What works in managing young people who offend? A summary of the international evidence. Ministry of Justice. <http://eprints.mdx.ac.uk/18848/1/youth-justice-review.pdf>

are going to live, having meaningful activity – whether work or education – during the day, and having their medical needs addressed are the three crucial pillars of success. More should be done to enrol children in work, education or training while they are in custody so that they can begin courses without delay when they return home. Local authorities should not wait until children are released before they take up a place in a school or college, or on a training scheme. This should happen in advance, and children should, where possible, be able to join courses on day release from custody. Equally, consideration should be given to schools and colleges always keeping a child on their roll if the time they will spend in custody is 12 months or less. Panels will also take account of term times when they consider the length of time children will spend in custody. Health services inside and outside custody should work closely together to make sure that children are transferred from one to the other without disruption.

153. Part of the difficulty is the division of responsibilities between the local authority, health and the secure establishment. The incentives for local authorities and custodial establishments to manage resettlement are not as strong as they should be, and a move to devolve the commissioning of Secure Schools will begin to address this disjointed system. The introduction of Children's Panels will also help to make sure that sufficient planning takes place from the moment children are placed in custody to their eventual release. Resettlement consortia in England and resettlement support panels in Wales, set up with the help of the YJB, have shown that where there is collective commitment between services, better preparation can be made for children when they are released. Local authorities should make sure that all children should know where they are going to live at least two weeks before they leave custody, and if they are in care or will be living away from the family home they should have the opportunity to visit the accommodation, see their room and meet the staff who will look after them.
154. In order to manage the transition from a closed institution to being supervised in the community, greater use should be made by Children's Panels and head teachers of Secure Schools of temporary release. This can help to promote independence and responsibility in children, and if used imaginatively can provide a powerful incentive for children to engage in the regime in custody and demonstrate the progress they are making. I also believe that Secure Schools provide an opportunity to introduce differentiated levels of security within an establishment, in order that as children move through their sentence they can acquire greater independence and be shown increased trust.

Remanded children receiving looked after status

155. Children who are remanded to youth detention accommodation were automatically given looked after status as part of the changes to the remand framework introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The aim was to make sure that local authorities continued to be mindful of, and to offer support to, children who are remanded to custody by the courts.
156. Though the objective was laudable – and there was certainly a concern that some children on remand were out of sight and therefore out of mind – I am not convinced that this has been the best way to achieve the goal. Many of the children who are remanded to custody do not fit the criteria for being looked after as they were not at risk when they were at home, and giving them looked after status when they have not even been convicted of a crime can be seen as an unnecessary stigma for

families. Most importantly, though, the statutory responsibilities of local authorities in relation to looked after children do not marry well with the way the youth custodial estate operates. Local authorities do not currently have the final say over where children are placed or the quality of provision, and therefore struggle to make sure that looked after children are properly provided for. The introduction of smaller and more local Secure Schools and, in time, the devolution of the budget and commissioning responsibility for youth custody will give local authorities greater control of the provision of custodial services for all children, whether looked after or not.

157. I therefore propose that the law should be amended so that only children who are already looked after retain this status when they are remanded or sentenced to custody.

Inspection of Secure Schools

158. As schools, such establishments in England would be inspected by Ofsted, with support as necessary from the Care Quality Commission, and held to the same standards as alternative provision schools in the community. In Wales, Secure Schools should be inspected by Estyn, with support from the CSSIW and the Healthcare Inspectorate Wales. The inspection framework for schools will need to be adapted to make sure there is proper scrutiny of the safeguarding, security, health and rehabilitation services in Secure Schools.
159. Having discussed with many leaders and practitioners during the review the relationships between children in care, residential schools and custodial establishments, I believe the inspectorates should seek to develop a single inspection framework for children living away from home in accommodation commissioned or provided by the state. It is right that these children should be looked after by adults that are all held to account to the same core standards, albeit with additional requirements which are specific to the setting (e.g. security in custody).

Conclusion

160. The changes that are required to transform the nature and effectiveness of the youth custodial estate are significant, but the argument for doing so is strong. If the astonishingly high reoffending rates are to be reduced, mental health problems tackled and the educational attainment of children in custody improved, the government must be prepared to change the entire way it thinks about youth custody. These children have, of course, been locked up because they have committed what are often serious offences and because they are considered a risk to the public, but society must never give up on them. Ultimately, if they are to succeed when they come out, these children must have a custodial estate that gives them what they need to overcome their problems, not what they might deserve.

Chapter 6 – The role of central government

The Youth Justice Board

161. The Youth Justice Board for England and Wales (YJB) was established by the Crime and Disorder Act 1998 to provide leadership to the youth justice system. The YJB is an executive non-departmental public body of the Ministry of Justice and performs a number of operational and advisory functions. Its statutory responsibilities include commissioning youth custodial provision, promoting good practice and monitoring and advising ministers on the operation of the youth justice system.
162. The 1998 reforms provided leadership to the system, formalised partnership working and ensured an ongoing focus on a previously neglected area of the criminal justice system. The fruits of this approach have been most evident since 2007 when both the number of children entering the youth justice system and the number in custody began the decline which has continued to the present. The YJB deserves much credit for its contribution to this success. The board has always been made up of a highly distinguished group with broad, practical experience of youth justice and wider services for children, and it has played an important role in overseeing the system and advising ministers. As an organisation, the YJB and its staff have played an invaluable part in consistently raising the profile of children and youth justice both across government and within a department that is predominately focused on adults.
163. Through the establishment of guidance and national standards, supplemented by mechanisms for monitoring performance and the quality of services, the YJB brought rigour and professionalism to the operation of the nascent YOT model. This was undoubtedly the right approach in the early 2000s, and one which was taken across many public services; but although the YJB has relaxed some of its requirements and expectations on YOTs in recent years, there is a sense from practitioners that the system is now overly centralised, and that their freedom to innovate is constrained. With fewer children in the system, the response to offending can and should be better tailored to local need, and it must be more effectively integrated with other services that are working with the same group of children and their families. It is for this reason that I propose a more devolved youth justice system with local authorities taking on greater responsibilities. The role of the centre in leading the system must change to reflect this new landscape.

The challenge for the centre

164. It is clear that in a more devolved youth justice system there will be a much reduced role for the centre. Local authorities will deliver and oversee more integrated youth offending services, with inspectorates monitoring quality and outcomes. In time the Welsh government and local authorities in England will come together to commission youth custody with the funding devolved from the Ministry of Justice. Nevertheless, in this changed landscape there remain important strategic and operational functions that must be performed by the government.

165. Ministers will continue to set the strategic direction for the youth justice system. This will include establishing the outcomes, success measures and accountability framework for youth justice services, as well as setting minimum standards (rather than an extensive set of national standards) to be met in the delivery of statutory functions. Strong strategic leadership of the system will become more important in a devolved landscape. Ministers will need to have access to high-quality information, data, research and advice in order to establish evidence-based strategy and policy. The UK government will need to work closely with the Welsh government to make sure that youth justice strategy takes proper account of devolved responsibilities in Wales.
166. There are also a number of operational functions currently performed by the YJB that the centre will need to continue to undertake in a more devolved system:
- placement into secure accommodation of children who are remanded or sentenced to custody by the courts and Children's Panels;
 - commissioning and management of escort services for transporting children between courts and custodial establishments;
 - monitoring of youth custodial establishments (in addition to the role performed by the inspectorates) to make sure that children are protected and minimum standards are met; and
 - planning for and guaranteeing sufficient custodial capacity across England and Wales.
167. While the centre will not play a direct or day-to-day role in monitoring the performance of local youth offending services, it has a key role to play in promoting a culture of peer improvement so that practitioners seek out effective and innovative practice from each other, and commission support from high-performing services. In the event of significant performance concerns or failing services or establishments, the centre must be able to intervene as it does with failing children's services departments.

Establishing an Office of the Youth Justice Commissioner

168. To support a smaller centre in achieving this transformation of the youth justice system, there will need to be clear accountability to ministers. I believe, therefore, that the responsibilities outlined above should be brought within the direct control of ministers, rather than held at arms-length from the government.
169. I propose that the functions outlined above should be overseen by the Office of the Youth Justice Commissioner, a specific directorate created within the Ministry of Justice which would replace the YJB and bring together in a single place responsibility for policy and delivery of youth justice. This directorate will be led by the Youth Justice Commissioner who will be appointed by the Secretary of State and will take charge of youth justice strategy, policy and delivery across England and Wales. The Commissioner could be recruited from outside the department in order that he or she brings the relevant experience of working with children, but would be appointed as a civil servant who acts on the delegated authority of ministers, rather than a public appointee who sits at arms' length to ministers and

would be restricted to performing only the specific functions which are set out in legislation. The responsibilities of the Youth Justice Commissioner will include:

- establishing a process for setting up and overseeing Secure Schools in partnership with the Department for Education and the Welsh government;
- setting minimum standards for youth justice services within local authorities and intervening when things are going wrong;
- working with the Department for Education and Ofsted in England, and the Welsh government and inspectorates in Wales, to set the accountability and inspection framework for local authorities and for Secure Schools;
- developing and overseeing the Children's Panels system; and
- overseeing arrangements for the devolution of the funding and commissioning of youth custody to local partners.

170. In the longer term consideration should be given to whether the Office of the Youth Justice Commissioner continues to be based in the Ministry of Justice, or whether in England it should move to the Department for Education which otherwise has policy responsibility for children.

Access to independent advice

171. I have been extremely impressed throughout the review by the range and quality of third sector organisations with an interest in youth justice and children's rights. I believe it is vital that the government has access to the advice and expertise of these groups, as well as the views of system leaders and frontline practitioners, in developing strategy and policy and in monitoring the operation of the system. I propose that the Ministry of Justice establishes a new expert committee in order that the government receives independent advice and challenge on its approach to youth justice and the operation of the system across England and Wales.

Chapter 7 – A new youth justice system

172. This report outlines the changes that need to be made if youth justice in England and Wales is to be transformed. I have described a new system in which young people are treated as children first and offenders second, and in which they are held to account for their offending, but with an understanding that the most effective way to achieve change will often be by improving their education, their health, their welfare, and by helping them to draw on their own strengths and resources.
173. In this reformed system there will be widespread recognition from the police and the courts that youth offending should be dealt with at the lowest possible level, avoiding the unnecessary escalation that will bring children further into the system and damage their life prospects. Given the characteristics of so many children who find themselves in trouble, a simple justice response to their offending will not be sufficient. Local authorities will have the freedom to use their resources more flexibly and will look to new ways of operating. Youth offending services will become better integrated with children's services, and the welfare needs of children who offend will be addressed as part of a coordinated response led by the local authority, but with committed support from the police, health, education, social care and probation. Children and young people's mental health services will operate with greater flexibility and ambition so that the most vulnerable children from chaotic families get access to the help that they need. Local authorities will become highly discerning commissioners of care homes, where staff are well trained to understand and manage children's behaviour and where looked after children will not be criminalised for trivial offences. When children are arrested they will be dealt with quickly and sensitively by the police and, with committed local authority support, only those charged with the most serious offences will be kept in police cells or remanded in custody.
174. Whenever possible children will be diverted away from the formal youth justice system, and offered support in the community, but for more serious crimes, where children have admitted the offence or been found guilty by the courts, children will appear before Children's Panels. Panels will take time to understand the nature and causes of the child's offending and will then create a Plan to help the child to change. Plans will hold the child to account for his or her behaviour and make a number of demands of the offender in line with sentencing guidelines. They will also make requirements on parents or carers, local authorities (including social care and housing), health services and schools. These Plans will be regularly reviewed when necessary to make sure that the child and everyone else involved with the Plan is fulfilling their part of the agreement. Plans will be adjusted where things are working well, or if they are going wrong. Children who would previously have spent short and disruptive periods in custody will now be managed robustly in the community. There will be an expectation that children will be busy during the day – attending school, college or work.
175. The needs of victims will be at the heart of the youth justice system and wherever possible a restorative approach will be used so that they can have the assurance that the child understands the effect of his or her behaviour and, as much as possible, puts things right.

176. For the most serious offences, the Panel will send the child to custody in a Secure School. These new institutions will ultimately be commissioned and funded locally. They will give the child a bespoke and intensive programme of study and support in a therapeutic and well-ordered environment. Secure Schools will tackle the root causes of the child's offending, including their behaviour, their mental health and their educational attainment. The Panel will continue to review the child's progress in the Secure School working closely with the head teacher and, where the child is doing well and is safe, will be able to permit the child to attend work, school or college placements outside the institution. The Panel will also be able to recommend early release for children who have engaged particularly well. Where children have not made sufficient progress, the Panel may require the child to stay at the Secure School until the end of their term. Secure Schools will be run by head teachers with the same freedoms to set the culture and recruit and train staff that they would have in mainstream schools. Children will be nearer to home, and Secure Schools will therefore be able to work with parents and local schools, colleges, housing and social care to make sure that the child can be seamlessly and effectively reintegrated back into the community.
177. Children will of course make mistakes as they grow up, and a few will go on to commit crimes. Some offences will be extremely serious and cause untold harm to victims and their families, and the perpetrators will rightly receive lengthy custodial sentences, but most of these offenders will eventually come out and re-join their communities. When they do so, it must be as reformed individuals who have changed their behaviour, are healthier and are able to retake their place as productive members of society.
178. It is only through the integrated, seamless and coordinated response that I have attempted to describe in this review, that the government and local partners can prevent more people becoming victims of crime, reduce the stubbornly high reoffending rates and give children who offend the help that they need to change.
179. Our aim should be to create a 21st century system that moves away from justice with some welfare, to a welfare system with justice.

Annex A – List of main recommendations

This report makes a number of recommendations for the UK and Welsh governments, inspectorates, local authorities and other bodies and services. The UK government is urged to consider and act upon all the recommendations in the report.

The list below sets out the main recommendations included in each chapter. It should be noted that this list does not contain all of the recommendations in the report.

Chapter 2 – A more devolved youth justice system

1. Health commissioners and providers in England and Wales should seize the opportunity presented by additional investment in children and young people's mental health services to rethink the way that mental health support is provided to children who are at risk and who currently do not get the access they need or deserve. (Paragraph 27)
2. The government should legislate to remove the requirement for local authorities to establish a youth offending team (YOT). The statutory duties which apply to YOTs should be transferred to local authorities, where appropriate, and the existing duties on the police, probation, education and health services to cooperate with youth offending services should remain. (Paragraph 37)
3. The Ministry of Justice should roll the money that it contributes to YOTs into the English local government finance system, and into the funding which the Welsh government provides to local authorities in Wales, and remove the ring-fence requiring that this is narrowly spent on youth justice services. (Paragraph 39)
4. The Ministry of Justice should halt the centre's role in routine performance management of youth offending services, and remove the requirement for local authorities to produce an annual youth justice plan. (Paragraph 43)
5. The Ministry of Justice should give further consideration to whether local authorities should be able to use their own assessment systems, rather than use systems prescribed by the centre, while making sure that central government continues to have access to the data it needs. (Paragraph 44)
6. Local authority youth offending services in England should be inspected by Ofsted as part of the inspection of children's services. Similarly, youth offending services in Wales should be inspected by Estyn and the Care and Social Services Inspectorate Wales (CSSIW). (Paragraph 46)
7. When local partners have developed the required capability, the Ministry of Justice should devolve the money it spends on custodial places to local areas, regions or the Welsh government in order that they can assume responsibility for commissioning their own secure provision. (Paragraph 52)

Chapter 3 – Coming into contact with the youth justice system

8. All local authorities, police forces and health services should jointly operate diversion schemes for children who offend, incorporating the principles set out in paragraph 59. (Paragraph 59)
9. Children should not be held in police custody for longer than six hours unless, owing to the seriousness and complexity of the case, an inspector authorises extending the period of detention and clear reasons are provided. In addition, the Home Office should re-examine the statutory review times for detained children with a view to reducing these to three hours. (Paragraph 62)
10. Further work should be undertaken by the Home Office, local authorities, the police, the Ministry of Justice, the Department for Education and the Welsh government to agree a complete set of mandatory national standards for appropriate adult schemes against which inspections should be conducted. These standards should cover those matters set out in paragraph 67. (Paragraph 67)
11. Ofsted, the CSSIW and Her Majesty's Inspectorate of Constabulary should consider the most appropriate approach to inspection of appropriate adult services and develop a framework which takes account of the roles of the local authority in commissioning the service, and both the police and the local authority in operating the scheme. (Paragraph 68)
12. Children should not be required to make a decision about seeing a solicitor at interview. There should be a presumption that a solicitor is called and legal advice is provided, unless the child expressly asks not to. (Paragraph 69)
13. There should be a presumption of releasing a child and organising a voluntary attendance interview or bail with a pre-arranged interview time if a solicitor cannot attend within two hours of a child being arrested. (Paragraphs 69)
14. The College of Policing should introduce mandatory child-specific training for all custody sergeants. (Paragraph 70)
15. In order that the particular needs of girls are met while they are in police custody, any girl aged under 18 who is arrested should be allocated a named female officer who is responsible for her welfare. (Paragraph 71)
16. The police, CPS, local authorities and health services should establish local protocols in order that all charging decisions take account of health screening assessments conducted in police custody or as a result of the offence, and any relevant information on the child that the local authority holds. (Paragraph 74)
17. All local authorities should make sure that care home staff are properly trained to resolve minor incidents without recourse to the police, and protocols should be established with police forces to agree a proportionate approach to offending in care homes. (Paragraph 77)
18. The Home Office, the Department for Education, the Welsh government and the National Police Chief's Council should work together to make sure that police officers are able to apply their full discretion in responding to incidents and offences in children's homes, and that there is a presumption of no formal criminal justice action being taken unless it is so serious that this is absolutely necessary. This

should include consideration of adopting the schools protocol in relation to minor offences committed in children's homes. (Paragraph 81)

19. The Ministry of Justice and the Home Office should develop a distinct approach to how childhood offending is treated by the criminal records system. (Paragraph 85)
This should include:
 - consideration of distinguishing between under-15s and 15-17 year olds in terms of the retention and disclosure implications of offending; (Paragraph 86)
 - further reductions in the periods before which childhood convictions become spent; (Paragraph 87)
 - all childhood offending (with the exception of the most serious offences) becoming non-disclosable after a period of time; (Paragraph 88) and
 - the circumstances in which police intelligence on childhood conduct can be disclosed being further restricted. The Home Office should consider the introduction of a presumption that police intelligence dating from childhood should not be disclosed except in exceptional circumstances. (Paragraph 89)

Chapter 4 – Children in court

20. The judiciary should consider further what can be done to prioritise cases involving children and to make sure that they are not kept waiting at court unnecessarily. (Paragraph 101)
21. Court summons should make clear that both parents are expected to attend court hearings unless there are specific reasons in relation to the child's welfare why they should not, and looked after children should always be accompanied by their carer or social worker. (Paragraph 102)
22. The Ministry of Justice should review the fee structure of cases heard in the Youth Court in order to raise their status and improve the quality of legal representation for children. When this is complete the Bar Standards Board and the Solicitors Regulation Authority should introduce mandatory training for all lawyers appearing in the Youth Court. (Paragraph 104)
23. The Ministry of Justice should consider introducing a presumption that all cases involving children should be heard in the Youth Court, with suitably qualified judges being brought in to oversee the most complex or serious cases in suitably modified proceedings. (Paragraph 105)
24. The Ministry of Justice should consider whether the law on youth reporting restrictions should be amended to provide for them to apply automatically in the Crown Court, to children involved in criminal investigations and for the lifetime of young defendants. (Paragraph 107)

25. The government should introduce a new system of Children's Panels (paragraph 98) which includes provision for:
- children being referred to a Panel when they plead guilty to a charge or have been found guilty in the Youth Court, or have been given a sentence of less than two years in custody by the Crown Court; (paragraph 109)
 - the Panel being made up of three specifically trained magistrates; (paragraph 110)
 - Panels being attended by the child, his or her parents or carers, lawyer and keyworker from the local authority, and any other professionals that the Panel may require including from education, health and social care; (paragraph 110)
 - the Panel investigating the causes of the child's behaviour, including any health, welfare and education issues, and putting in place a rigorous Plan that will tackle the factors associated with the offending and give victims and communities assurance that the behaviour is being addressed; (paragraph 111)
 - Plans placing expectations on parents or carers, social care, housing, health and education services, with all parties – the child included – being held robustly to account for their contribution to its success; (paragraph 112)
 - Plans including a period of time in custody where appropriate for the most serious offences; (paragraph 112)
 - Plans including a process for regular reviews of the case by the Panel with the opportunity to change the terms of the Plan depending on its success; (paragraph 113) and
 - Plans being published – with names and any other means of identifying the child removed – so that the process is open and transparent. (Paragraph 111)
26. The Government should remove or substantially restrict the availability of short custodial sentences. The minimum amount of time that a child should spend in detention is six months (equivalent to the current 12-month Detention and Training Order). The only exception to this should be those few offences for which Parliament has established mandatory minimum terms. (Paragraph 117)
27. Children aged under 16 should only be given a Plan with a custodial element in exceptional circumstances, and usually where they pose a significant risk to the public. (Paragraph 117)
28. There should be close monitoring by the government of such a change to make sure that children who would previously have received a short custodial sentence are not instead sent to custody for longer periods of time. (Paragraph 119)
29. The Ministry of Justice should consider whether further changes could be made to the conditions for a remand to youth detention accommodation to make sure that custody is always used as a last resort. (Paragraph 122)

Chapter 5 – Secure Schools

30. The Ministry of Justice, the Department for Education and the Welsh government should work together to create Secure Schools in England and Wales which:
 - are created within schools legislation, and set up, run, governed and inspected as schools. In England they should be commissioned in a similar way to alternative provision free schools; (paragraph 141)
 - accommodate up to 60-70 children and are located in the regions that they serve; (paragraph 141)
 - provide head teachers with the autonomy and flexibility to recruit and train their own staff, to commission vital support services (including a stronger role in commissioning health services such as mental health and speech therapy), to establish the approach to managing behaviour and rewarding success and, as a result, to create a productive and therapeutic culture which will raise attainment, improve behaviour and promote rehabilitation; (paragraph 142)
 - provide children with a bespoke package of support and an education that will address their difficulties and their offending behaviour, as well as giving them the skills, knowledge and qualifications that will help them to succeed when they are released;
 - deliver an improved and better integrated health offer; (paragraph 143)
 - put behaviour management in the hands of skilful, well trained education, health and welfare support workers. (Paragraph 144)
31. Local authorities should always aim to retain the same social worker during a child's time in custody. (Paragraph 151)
32. Local authorities should make sure that all children should know where they are going to live at least two weeks before they leave custody, and if they are in care or will be living away from the family home they should have the opportunity to visit the accommodation, see their room and meet the staff who will look after them. (Paragraph 153)
33. The law should be amended so that only children who are already looked after retain this status when they are remanded or sentenced to custody. (Paragraph 157)
34. Secure Schools in England should be inspected by Ofsted, with support as necessary from the Care Quality Commission, and held to the same standards as alternative provision schools in the community. In Wales, Secure Schools should be inspected by Estyn, with support from the CSSIW and the Healthcare Inspectorate Wales. (Paragraph 158)

Chapter 6 – The role of central government

35. The Ministry of Justice should create an Office of the Youth Justice Commissioner, a specific directorate within the department which replaces the Youth Justice Board for England and Wales (YJB) and brings together in a single place responsibility for policy and delivery of youth justice. The Youth Justice Commissioner would have the responsibilities set out in paragraph 169. (Paragraph 169)
36. The Ministry of Justice should establish a new expert committee in order that the government receives independent advice and challenge on its approach to youth justice and the operation of the system across England and Wales. (Paragraph 171)

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